

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### *ADMINISTRATIVE RULES REVIEW*

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#### *Legislative Session 2004*

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0203**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is November 1, 2002. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-120, 56-202, 56-203, 56-1003(l), 56-1004(l)(a), Idaho Code. Also, Title XIX (Medicaid) of the Social Security Act (see 42 CFR Section 447).

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In Section 451 of these rules the maximum reimbursement for covered charges was reduced by three and a half percent (3.5%) to reflect the holdback being made to comply with Executive Orders 2002-08 and 09.

The reimbursement floor percentage was reduced by three and a half percent (3.5%) and now applies to all hospitals licensed and Medicare certified for the State Fiscal Year ending June 30, 2002.

Pursuant to Section 67-5228, Idaho Code, transcriptional corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the December 4, 2002, Idaho Administrative Bulletin, Volume 02-12, pages 130 through 134.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jan Uren at (208) 364-1854.

DATED this 10th day of April, 2003.

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DEPARTMENT OF HEALTH AND WELFARE  
Medicaid Provider Reimbursement In Idaho

Docket No. 16-0310-0203 - Pending Rule  
Amendment to Temporary Rule

### IDAPA 16, TITLE 03, CHAPTER 10

#### RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-12, December 4, 2002, pages 130 through 134.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0310-0203

#### SUBSECTIONS 451.09 and 451.25

##### 451. DEFINITIONS.

In determining hospital reimbursement on the basis either of Customary Charges or of the Reasonable Cost of services under Medicaid guidelines, whichever is less, the following will apply: (4-5-00)

**09. Customary Charges.** Customary Charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Title XIX program. No more than ~~one hundred ninety-six and a half percent (196.5%)~~ of covered charges will be reimbursed for the separate Operating Costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 453.02. ~~(7-1-97)(11-1-02)T~~

**25. Reimbursement Floor Percentage.** The percentage of allowable Medicaid costs guaranteed to all hospitals ~~with more than forty (40) licensed and Medicare certified inpatient beds during the following state fiscal years is as follows:~~ for State Fiscal Year Ending November 1, 2002 and thereafter - eighty one and a half percent (81.5%). ~~(7-1-97)(11-1-02)T~~

- ~~a. State Fiscal Year Ending June 30, 1996 - eighty percent (80%); (7-1-97)~~
- ~~b. State Fiscal Year Ending June 30, 1997 - eighty-one percent (81%); (7-1-97)~~
- ~~c. State Fiscal Year Ending June 30, 1998 - eighty-two percent (82%); (7-1-97)~~
- ~~d. State Fiscal Year Ending June 30, 1999 - eighty-three percent (83%); (7-1-97)~~
- ~~e. State Fiscal Year Ending June 30, 2000 - eighty-four percent (84%); (7-1-97)~~
- ~~f. State Fiscal Year Ending June 30, 2001 - eighty-five percent (85%); (11-1-02)T~~
- ~~g. State Fiscal Year Ending June 30, 2002 and thereafter - eighty-five percent (85%); (11-1-02)T~~



## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0203**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective November 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-120, 56-202, 56-203, 56-1003(1), 56-1004(1)(a), Idaho Code. Also, Title XIX (Medicaid) of the Social Security Act (see 42 CFR Section 447).

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

Rule amendments change the methodology by which hospital rate and cost reimbursement settlements are set.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(b), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rulemaking occurred to comply with executive mandate.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0203

#### **451. DEFINITIONS.**

In determining hospital reimbursement on the basis either of Customary Charges or of the Reasonable Cost of services under Medicaid guidelines, whichever is less, the following will apply: (4-5-00)

**01. Allowable Costs.** The Current Year's Title XIX apportionment of a hospital's Allowable Costs determined at final or interim settlement consist of those costs permitted by the principles of reimbursement contained in the Provider Reimbursement Manual (PRM) and do not include costs already having payment limited by Medicaid rate file or any other Medicaid charge limitation. (4-5-00)

**02. Apportioned Costs.** Apportioned Costs consist of the share of a hospital's total Allowable Costs attributed to Medicaid program recipients and other patients so that the share borne by the program is based upon actual services received by program recipients, as set forth in the applicable Title XVIII principles of cost reimbursement as specified in the PRM and in compliance with Medicaid reimbursement rules. (4-5-00)

**03. Capital Costs.** For the purposes of hospital reimbursement, Capital Costs are those allowable costs considered in the settlement that represent the cost to each hospital for its reasonable property related and financing expense, and property taxes. (4-5-00)

**04. Case-Mix Index.** The Case-Mix Index for a hospital is the average weight of values assigned to a range of diagnostic related groups, including but not limited to, those used in the Medicare system or adjoining states and applied to Medicaid discharges included in a hospital's fiscal year end settlement. The index will measure the relative resources required to treat Medicaid inpatients. The Case-Mix Index of the Current Year will be divided by the index of the principal year to assess the percent change between the years. (7-1-97)

**05. Charity Care.** Charity Care is care provided to individuals who have no source of payment, third-party or personal resources. (7-1-97)

**06. Children's Hospital.** A Children's Hospital is a Medicare certified hospital as set forth in 42 CFR Section 412.23(d). (7-1-97)

**07. Cost Report.** A Cost Report is the complete Medicare cost reporting form HCFA 2552, or its successor, as completed in full and accepted by the Intermediary for Medicare cost settlement and audit. (7-1-97)

**08. Current Year.** Any hospital cost reporting period for which Reasonable Cost is being determined will be termed the Current Year. (7-1-97)

**09. Customary Charges.** Customary Charges reflect the regular rates for inpatient or outpatient services charged to patient(s) liable for payment for their services on a charge basis. Implicit in the use of charges as the basis for comparability (or for apportionment under certain apportionment methods) is the objective that services are related to the cost of services billed to the Title XIX program. No more than one hundred percent (100%) of covered charges will be reimbursed for the separate Operating Costs for either total inpatient services or total outpatient services at the time of final cost settlement for any fiscal year with the exception set forth in Subsection 453.02. (7-1-97)

**10. Disproportionate Share Hospital (DSH) Allotment Amount.** The DSH Allotment Amount determined by Health Care Financing Administration which is eligible for federal matching funds in any federal fiscal period for disproportionate share payments. (7-1-97)

**11. Disproportionate Share Hospital (DSH) Survey.** The DSH Survey is an annual data request from the Department to the hospitals to obtain the information necessary to compute DSH pursuant to Subsection 454.01. (7-1-97)

**12. Disproportionate Share Threshold.** The Disproportionate Share Threshold shall be: (7-1-97)

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Medicaid Provider Reimbursement

Docket No. 16-0310-0203  
Temporary and Proposed Rulemaking

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a. The arithmetic mean plus one (1) standard deviation of the Medicaid Utilization Rates of all Idaho Hospitals; or (7-1-97)

b. A Low Income Revenue Rate exceeding twenty-five percent (25%). (7-1-97)

**13. Excluded Units.** Excluded Units are distinct units in hospitals which are certified by Medicare according to 42 CFR Sections 412.25, 412.27 and 412.29 for exclusion from the Medicare prospective payment system. (7-1-97)

**14. Hospital Inflation Index.** ~~For purposes of determining the rate of increases of historical and forecasted Title XIX Inpatient Operating Cost Limits, and interim rates, the DRI, Data Resources Incorporated, Type Hospital Market Basket quarterly moving average, or its successor, is the Hospital Inflation Index. An index calculated through Department studies and used to adjust inpatient operating cost limits and interim rates for the current year.~~ (7-1-97)(11-1-02)T

**15. Low Income Revenue Rate.** The Low Income Revenue Rate is the sum of the following fractions, expressed as a percentage, calculated as follows: (7-1-97)

a. Total Medicaid inpatient revenues paid to the hospital, plus the amount of the cash subsidies received directly from state and local governments in a cost reporting period, divided by the total amount of revenues and cash subsidies of the hospital for inpatient services in the same cost reporting period; plus (7-1-88)

b. The total amount of the hospital's charges for inpatient hospital services attributable to charity care in the same cost reporting period, divided by the total amount of the hospital's charges for inpatient services in the hospital in the same period. The total inpatient charges attributed to charity care shall not include contractual allowances and discounts and reduction in charges given to Medicare, Medicaid, other third-party payors, or cash for patient services received directly from state and local governments county assistance programs. (7-1-97)

**16. Medicaid Inpatient Day.** For purposes of DSH payments, an inpatient day is defined as a Medicaid inpatient day in a hospital for which there is also no Medicare inpatient day counted. (7-1-97)

**17. Medicaid Utilization Rate (MUR).** The MUR for each hospital will be computed using the Department's record of paid inpatient days for the fiscal year divided by the total inpatient days for the same fiscal year as reported in the DSH Survey. In this paragraph, the term "inpatient days" includes Medicaid swing-bed days, administratively necessary days, newborn days, days in specialized wards, days provided at an inappropriate level of care, and Medicaid inpatient days from other states. In this paragraph, "Medicaid inpatient days" includes paid days not counted in prior DSH Threshold computations. (4-5-00)

**18. Obstetricians.** For purposes of an adjustment for hospitals serving a disproportionate share of low income patients, and in the case of a hospital located in a rural area, as defined by the federal Executive Office of Management and Budget, the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures. (7-1-88)

**19. On-Site.** A service location over which the hospital exercises financial and administrative control. "Financial and administrative control" means a location whose relation to budgeting, cost reporting, staffing, policy-making, record keeping, business licensure, goodwill and decision-making are so interrelated to those of the hospital that the hospital has ultimate financial and administrative control over the service location. The service location shall be in close proximity to the hospital where it is based, and both facilities serve the same patient population (e.g. from the same area, or catchment, within Medicare's defined Metropolitan Statistical Area (MSA) for urban hospitals or thirty-five (35) miles from a rural hospital). (4-5-00)

**20. Operating Costs.** For the purposes of hospital reimbursement, Operating Costs are the allowable costs included in the cost centers established in the finalized Medicare Cost Report to accumulate costs applicable to providing routine and ancillary services to patients for the purposes of cost assignment and allocation in the step-down process. (7-1-97)

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules Governing Medicaid Provider Reimbursement****Docket No. 16-0310-0203**  
**Temporary and Proposed Rulemaking**

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**21. Other Allowable Costs.** Other Allowable Costs are those Reasonable Costs recognized under the Medicaid Reasonable Cost principles for services not subject to Medicaid limitations of coverage or reimbursement limits. Costs which are not reimbursed as Operating Costs, but recognized by Medicare principles as Allowable Costs will be included in the total Reasonable Costs. Other Allowable Costs include, but are not necessarily limited to, physician's component which was combined-billed, Capital Costs, ambulance costs, excess costs, carry-forwards and medical education costs. (7-1-97)

**22. Principal Year.** The Principal Year is the period from which the Title XIX Inpatient Operating Cost Limit is derived. (7-1-97)

**a.** For services rendered from July 1, 1987 through July 5, 1995, the Principal Year shall be the provider's fiscal year ending in calendar year 1984 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

**b.** For inpatient services rendered after July 5, 1995, through June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1992 in which a finalized Medicare Cost Report, or its equivalent, is prepared for Title XIX cost settlement. (7-1-97)

**c.** For inpatient services rendered after June 30, 1998, the Principal Year shall be the provider's fiscal year ending in calendar year 1995 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (7-1-97)

**d.** For inpatient services rendered on or after November 1, 2002, the Principal Year shall be the provider's fiscal year ending in calendar year 1998 in which a finalized Medicare Cost Report or its equivalent is prepared for Title XIX cost settlement. (11-1-02)T

**23. Public Hospital.** For purposes of Subsection 453.02, a Public Hospital is a hospital operated by a federal, state, county, city, or other local government agency or instrumentality. (7-1-97)

**24. Reasonable Costs.** Except as otherwise provided in Section 453, Reasonable Costs include all necessary and ordinary costs incurred in rendering the services related to patient care which a prudent and cost-conscious hospital would pay for a given item or service which do not exceed the Title XIX cost limit. (7-1-97)

**25. Reimbursement Floor Percentage.** The percentage of allowable Medicaid costs guaranteed to hospitals with more than forty (40) licensed and Medicare certified inpatient beds during the following state fiscal years is as follows: (7-1-97)

**a.** State Fiscal Year Ending June 30, 1996 - eighty percent (80%); (7-1-97)

**b.** State Fiscal Year Ending June 30, 1997 - eighty-one percent (81%); (7-1-97)

**c.** State Fiscal Year Ending June 30, 1998 - eighty-two percent (82%); (7-1-97)

**d.** State Fiscal Year Ending June 30, 1999 - eighty-three percent (83%); (7-1-97)

**e.** State Fiscal Year Ending June 30, 2000 - eighty-four percent (84%); (7-1-97)

**f.** State Fiscal Year Ending June 30, 2001 - eighty-five percent (85%); ~~(7-1-97)~~ (11-1-02)T

**g.** State Fiscal Year Ending June 30, 2002 and thereafter - eighty-five percent (85%). (11-1-02)T

**26. TEFRA.** TEFRA is the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97-248. (7-1-97)

**27. Uninsured Patient Costs.** For the purposes of determining the additional costs beyond uncompensated Medicaid costs that may be reimbursed as a DSH payment without exceeding the state Allotment

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Medicaid Provider Reimbursement

### Docket No. 16-0310-0203 Temporary and Proposed Rulemaking

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Amount, only inpatient costs of uninsured patients will be considered. An inpatient with insurance but no covered benefit for the particular medically necessary service, procedure or treatment provided is an uninsured patient.

(4-5-00)

**28. Upper Payment Limit.** The Upper Payment Limit for hospital services shall be as defined in the Code of Federal Regulations.

(7-1-97)

#### **452. TITLE XIX INPATIENT OPERATING COST LIMITS.**

*In the determination of Reasonable Costs, a separate Title XIX cost limit for the services rendered under the approved state plan will be in effect during the Current Year. Payments will meet the costs of an economically and efficiently operated facility when the Title XIX cost limit, in effect during the same Current Year, is applied.* Subsections 452.01 and 452.02 of this rule describe the determination of inpatient operating cost limits.

~~(7-1-97)~~(11-1-02)T

**01. Title XIX Cost Limits For Dates Of Service Prior To A Current Year.** The reimbursable Reasonable Costs for services rendered prior to the beginning of the Principal Year, but included as prior period claims in a subsequent period's Cost Report, will be subject to the same operating cost limits as the claims under settlement.

(7-1-97)

**02. Application Of The Title XIX Cost Limit**~~After Effective Date Of Rules~~. In the determination of a hospital's Reasonable Costs for inpatient services rendered after the effective date of a Principal Year, a Hospital Inflation Index, computed for each hospital's fiscal year end, will be applied to the Operating Costs, excluding Capital Costs and Other Allowable Costs as defined for the Principal Year and adjusted on a per diem basis for each subsequent year under the Hospital Inflation Index.

~~(7-1-97)~~(11-1-02)T

**a.** Each inpatient routine service cost center, as reported in the finalized Principal Year end Medicare Cost Report, will be segregated in the Title XIX cost limit calculation and assigned a share of total Title XIX inpatient ancillary costs. The prorated ancillary costs shall be determined by the ratio of each Title XIX routine cost center's reported costs to total Title XIX inpatient routine service costs in the Principal Year.

(7-1-97)

**b.** Each routine cost center's total Title XIX routine service costs plus the assigned share of Title XIX inpatient ancillary costs of the Principal Year will be divided by the related Title XIX patient days to identify the total costs per diem in the Principal Year.

(7-1-97)

**i.** The related inpatient routine service cost center's per diem capital and graduate medical education costs plus the prorated share of inpatient ancillary capital costs will be subtracted from the per diem amount identified in Subsection 452.02.b. to identify each inpatient routine service cost center per diem cost limit in the Principal Year.

(7-1-97)

**ii.** If a provider did not have any Title XIX inpatient utilization or render any Title XIX inpatient services in an individual inpatient routine service cost center in the fiscal year serving as the Principal Year, the Principal Year for only those routine cost centers without utilization in the provider's Principal Year will be appropriately calculated using the information available in the next subsequent year in which Title XIX utilization occurred.

(7-1-97)

**c.** Each routine cost center's cost per diem for the Principal Year will be multiplied by the Hospital Inflation Index for each subsequent fiscal year.

(7-1-97)

**d.** The sum of the per diem cost limits for the Title XIX inpatient routine service cost centers of a hospital during the Principal Year, as adjusted by the Hospital Inflation Index, will be the Title XIX cost limit for Operating Costs in the Current Year.

(7-1-97)

**i.** At the date of final settlement, reimbursement of the Title XIX Current Year inpatient routine cost centers plus the assigned ancillary costs will be limited to the total per diem Operating Costs as adjusted for each subsequent fiscal year after the Principal Year through the Current Year by the Hospital Inflation Cost Index.

(7-1-97)

**ii.** Providers will be notified of the estimated inflation index periodically or Hospital Inflation Index (HCFA Market Basket Index) prior to final settlement only upon written request.

(7-1-97)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0204**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the December 4, 2002, Administrative Bulletin, Volume 02-12, pages 135 through 141.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Lloyd Forbes at (208) 364-1831.

DATED this 9th day of January, 2003.

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### **IDAPA 16, TITLE 03, CHAPTER 10**

#### **RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-12, December 4, 2002, pages 135 through 141.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0204**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective August 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than December 18, 2002.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This rule change will remove wheelchairs from the list of routine supplies of ICF/MR facilities. This rule eliminates the requirement that ICF/MR facilities must purchase wheelchairs for residents and will provide an incentive to facilities to admit wheelchair bound persons. This rule change will eliminate a cash flow problem for facilities and allow a person to take their own wheelchair from facility to facility and, facility to a community placement.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to confer a benefit to the public.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the ICF/MR industry.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes at (208) 364-1831.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0204**

**405. ANCILLIARY AND ROUTINE NURSING SUPPLIES.**

**01. Ancillary Supplies.**

<b>Ancillary Supplies</b>
Artificial Limbs
Canes
Laboratory Tests
Legend Drugs and Insulin paid to facilities on a patient and prescription specific basis
Radiology
X-ray

(7-1-93)

**02. Routine Supplies.**

<b>Routine Supplies</b>
A & D Ointment
ABD Pad
Ace Bandages
Acquamatic K Pads
Air Mattress
Alcohol Applicators
Arm Slings
Asepto Syringes
Autoclave Sheets
Baby Powder
Band Aid Spots
Band Aids
Bandages/Elastic
Bandages/Sterile
Basins
Bed Frame Equipment



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Routine Supplies
Bed Pans
Bedside Tissues
Benzoin Aerosol
Bibs
Bottles/Specimen
Braces
Butterfly Closures
Cannula/Nasal
Catheter Clamp
Catheter Plug
Catheter Tray
Catheters, any size
Catheters/Irrigation
Clinitest
Clysis Set
Coloplast
Cotton Balls
Crutches
Decubitus Ulcer Pads
Defecation Pads
Denture Cup
Deodorant
Dermassage
Disposable Leg Bag
Disposable Underpads
Donut Pad
Douche Bags
Drainage Bags
Drainage Sets
Drainage Tubing
Dressing/Sterile
Dressing Tray

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Routine Supplies
Drugs Nonlegend
Enema Cans/Disposable
Enema/Fleets
Enema/Fleets in Oil
Female Urinal
Finger Cots
Flex Straws
Flotation Mattress
Foot Cradle
Gastric Feeding Tube
Gloves/Nonsterile
Gloves/Sterile
Gowns
Hand Feeding
Harris Flush Tube
Heat Cradle
Heating Pad
Heel Protectors
Hexol
Hot Pack Machine
Ice Bag
Identification Bands
Incontinency Care
Invalid Ring
IPPB Machine
Irrigation Bulb
Irrigation Set
Irrigation Solution
Irrigation Tray

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Routine Supplies
IV Set
Jelly/Lubricating
Killet Ampules
Kleenex
Kling bandages/Sterile
KY Jelly
Levine Tube
Linen
Lotion
Maalox
Male Urinal
Massages
Medical Social Services
Medicine Cups
Medicine Dropper
Merthiolate Spray
Milk of Magnesia
Mineral Oil
Mouthwashes
Nasal Cannula
Nasal Catheter
Nasal Gastric Tube
Nasal Tube
Needles
Nonallergic Tape (paper tape)
Nursing Services
Occupational Therapy
Ointment/Skin Nonprescription

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Routine Supplies
Overhead Trapeze
Oxygen
Oxygen Equipment-IPPB
Oxygen Mask/Disposable
Oxygen/Nondisposable
Peroxide
Personal Laundry (except for dry cleaning and special laundry)
Pitcher
Physical Therapy* <u>(subject to Department policy)</u>
Plastic Bib
Pumps* <u>(subject to Department policy)</u>
Rectal Tube
Restraints
Room and Board
Sand Bags
Scalpel
Sheep Skin
Special Diets
Specimen Cup
Speech Therapy
Sponges/Sterile
Sterile Pads
Stomach Tube
Suction Machines
Suppositories
Surgical Dressings
Surgical Pads
Surgical Tape/Nonallergic
Suture Set Suture Tray
Swabs/Lemon & Glycerin

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Routine Supplies
Tape (Lab-Testing)
Tape/Autoclave
Testing Sets/Refills
Thermometers
Tincture of Benzoin
Tongue Blades
Tracheostomy Sponges
Tray Service
Tubing/IV
Tubing/Blood
Tubing/Drainage
Urinals
Urinary Drainage Tube Underpads (if more than occasional use)
Urological Solutions
Vaseline
Walkers
Water Pitchers
Wheel Chairs ( <u>except for ICF/MR facilities</u> )
Water for Injection

*\*Subject to Department policy*

~~(1-1-82)~~(8-1-02)T

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-101 through 135, 56-202, 56-203, 56-1003(l), 56-1004(l)(a), Idaho Code; and 42 CFR Part 447.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the Idaho Administrative Bulletin, January 1, 2003, Volume 03-1, pages 94 through 100.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jan Uren at (208) 364-1854.

DATED this 30th day of April, 2003.

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#### **IDAPA 16, TITLE 03, CHAPTER 10**

#### **RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-1, January 1, 2003, pages 94 through 100.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective August 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-101 through 135, 56-202, 56-203, 56-1003(l), 56-1004(l)(a), Idaho Code; and 42 CFR Part 447.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Idaho Medicaid Program will reimburse for out-of-state nursing home placements when services are not available in Idaho to meet the recipient's medical need, or in a temporary situation for a limited period of time required to safely transport the recipient to an Idaho facility. Reimbursement for out-of-state nursing homes will be at the per diem rate set by the Medicaid Program in the state where the nursing home is located. This rulemaking will also require a change in IDAPA 16.03.09, Subsection 015.03.b. Adds Section 005 "Incorporation by Reference".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to confer a benefit to the public.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these amendments only clarify, but do not change, existing practice.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 22, 2003.

DATED this 5th day of November, 2002.

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0301

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### 000. LEGAL AUTHORITY.

Title XIX (Medicaid) of the Social Security Act, as amended, is the basic authority for administration of the federal program (see 42 CFR Part 447). Title 56, Chapter 1, Idaho Code, establishes standards for provider payment for in-state providers. Section 56-202, Idaho Code, provides that the Department is responsible for administering the program. Further it authorizes the Department to take necessary steps for its proper and efficient administration.

~~(4-5-00)~~(8-1-02)T

#### 01. General.

(7-1-93)

a. Fiscal administration of the Idaho Title XIX Medicaid Program will be in accordance with these rules ~~and the Federal~~ as well as 42 CFR Part 447 and the Provider Reimbursement Manual (PRM) Part I and Part II, found in HCFA Publication 15-1 and 15-2, which ~~is~~ are hereby incorporated by reference in Section 005 of these rules. These materials are available from HCFA, 7500 Security Blvd, Baltimore, M.D., 21244-1850 or on the internet @ <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>. The provisions shall apply unless otherwise authorized.

~~(4-5-00)~~(8-1-02)T

b. Generally accepted accounting principles, concepts and definitions shall be followed in determining acceptable accounting treatments except as otherwise provided.

(1-16-80)

02. **Compliance As Condition Of Participation.** Compliance with the provisions in this chapter, its amendments, and additions is required for participation in the Idaho Title XIX (Medicaid) Program.

(4-5-00)

### (BREAK IN CONTINUITY OF SECTIONS)

### 005. INCORPORATION BY REFERENCE.

Unless provided otherwise, any reference in these rules to any document identified in Section 005 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards, or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. The following documents are hereby incorporated by reference:

(8-1-02)T

01. **42 CFR Part 447.** 42 CFR Part 447, "Payment for Services," revised as of October 1, 2001, is available from HCFA (CMS), 7500 Security Blvd, Baltimore, M.D., 21244-1850 or on the Code of Federal Regulations internet site at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html>.

(8-1-02)T

02. **Provider Reimbursement Manual (PRM).** The Provider Reimbursement Manual (PRM), Part I and Part II (HCFA Publication 15-1 and 15-2), is available on the CMS internet site at <http://cms.hhs.gov/manuals/pub151/PUB151.asp> and <http://cms.hhs.gov/manuals/pub152/PUB152.asp>.

(8-1-02)T

0056. -- 049. (RESERVED).

### (BREAK IN CONTINUITY OF SECTIONS)

### 250. COST LIMITS FOR NURSING FACILITIES.

Sections 250 through 3125 of these rules, provide procedures and specifications necessary to implement the provisions and accomplish the objectives of the nursing home reimbursement system as specified in Sections 56-101 through 56-135, Idaho Code. All audits related to fiscal years ending on or before December 31, 1999 are subject to rules in effect before July 1, 1999.

~~(4-5-00)~~(8-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### DEPARTMENT OF HEALTH AND WELFARE Medicaid Provider Reimbursement in Idaho

Docket No. 16-0310-0301  
Temporary and Proposed Rulemaking

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#### **307. OUT-OF-STATE NURSING HOMES.**

The Idaho Medicaid Program will reimburse for out-of-state nursing home placements when services are not available in Idaho to meet the recipient's medical need, or in a temporary situation for a limited period of time required to safely transport the recipient to an Idaho facility. Reimbursement for out-of-state nursing homes will be at the per diem rate set by the Medicaid Program in the state where the nursing home is located. Special rates will be allowed according to Section 311 of these rules. (8-1-02)T

#### **3078. DISTRESSED FACILITY.**

If the Department determines that a facility is operationally or financially unstable, is located in an under-served area, or addresses an under-served need, the Department may negotiate a reimbursement rate different than the rate then in effect for that facility. (4-5-00)

#### **3082. INTERIM ADJUSTMENTS TO RATES AS A RESULT OF NEW MANDATES.**

Certain costs may be excluded from the cost limit calculations, may be subject to retrospective settlement at the discretion of the Department, and may result in changes to the prospective rates as provided in this Section to assure equitable reimbursement: (4-5-00)

**01. Changes Of More Than Fifty Cents Per Patient Day In Costs.** Changes of more than fifty cents (\$.50) per patient day in costs otherwise subject to the cost limitations incurred by a facility as a result of changes in state or federal laws or rules will be reported separately on the cost report until such time as they can be properly reflected in the cost limits. (4-5-00)

**a.** The provider shall report these costs on a separate schedule or by notations on the cost report so that these costs can be identified and reconciled to the provider's general ledger. These costs will be reported separately and will not be reimbursed through the rate setting process until the costs are fully represented in the cost data used to establish the cost limitations and rates. (4-5-00)

**b.** If more than one (1) increase occurs as a result of one (1) or more law or rule changes, the costs from each event are to be reported separately. (4-5-00)

**c.** The computation of the cost increase amount or amounts is to be presented in detail on a supplementary schedule or schedules unless the Department states otherwise. (4-5-00)

**02. Interim Rate Adjustments.** For interim rate purposes, the provider may be granted an increase in its prospective rate to cover such cost increases. A cost statement covering a recent period may be required with justification for the increased costs. The actual amount related to such increases will be determined at audit and may be retrospectively settled. (4-5-00)

**03. Future Treatment Of Costs.** After the initial deadline has passed for all providers to file cost reports for reporting periods beginning on or after the date certain cost increases were first required, the Department will, at its option, include all of the previously excluded costs related to those increases in the calculation of costs subject to the cost center limits. The intent of this provision is for costs to be exempt from the cost limits until these costs are able to be fully and equitably incorporated into the data base used to project the cost limits. When cost increases which have been excluded from the cap are incorporated in the inflation indices used to set the cost limits, the cost indices will be adjusted to exclude the influence of such changes if the amount included in the index is identified. When the cost limits are set to include previously excluded amounts, any adjustments made to the indices related to the previously excluded costs will be removed. (4-5-00)

#### **~~309~~10. MDS REVIEWS.**

The following Minimum Data Set (MDS) reviews will be conducted:

~~(4-5-00)~~(8-1-02)T

**01. Facility Review.** Subsequent to the picture date, each facility will be sent a copy of its resident roster (a listing of residents, their RUG classification, case mix index, and identification as Medicaid or other). It will be the facility's responsibility at that time to review the roster for accuracy. If the roster is accurate, the facility will sign and return the roster for rate setting. If any errors are detected, those errors will be communicated to the Department in writing along with any supporting documentation. If the signed resident roster is not returned and no errors are communicated to the Department, the original resident roster will be used for rate setting. Once the resident

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roster has been used for rate setting, it will be considered final unless modified by subsequent Departmental review. (4-5-00)

**02. Departmental Review.** If a departmental review of the MDS data reveals errors that result in an incorrect case mix index, the provider's rate will be retroactively adjusted, for all quarters containing the incorrect assessment, and an amount due to or from the Department will be calculated. This does not include residents who received the default classification due to incomplete or inconsistent MDS data. (4-5-00)

### **3101. SPECIAL RATES.**

Section 56-117, Idaho Code, provides authority for the Director to pay facilities a special rate for care given to patients who have long term care needs beyond the normal scope of facility services. These patients must have needs which are not adequately reflected in the rates calculated pursuant to the principles set forth in Section 56-102, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of this section will be excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (4-5-00)

**01. Determinations.** A determination to approve or not approve a special rate will be made on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request will be for an expected condition that will be on-going for a period of greater than two (2) weeks. (4-5-00)

**02. Application.** Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in Section 56-102, Idaho Code. (4-5-00)

**03. Approval.** Approved special rates will become effective on the date the application is received, but no earlier than the first day of the month in which the application for a special rate was received. (4-5-00)

**04. Reporting.** Costs equivalent to payments at the special rate will be removed from the cost components subject to limits, and will be reported separately. (4-5-00)

**05. Limitation.** The reimbursement rate paid will not exceed the provider's charges to other patients for similar services. (4-5-00)

**06. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 3101.07 through 3101.09 of these rules provide clarification of how special rates will be handled under the prospective payment system. ~~(3-15-02)~~(8-1-02)T

**07. Residents Qualifying.** Special rates are intended for residents who have long term care needs beyond the normal scope of facility services, and whose needs are not adequately reflected in the rates set pursuant to Section 56-102, Idaho Code. (3-15-02)

**08. Determination Of Payment For Qualifying Residents.** Special rates shall be reimbursed in one (1) of the methods described in Subsections 3101.08.a. through 3101.08.d. of these rules. ~~(7-1-02)T~~(8-1-02)T

**a. Special Rate Units.** If a facility operates a special rate unit; i.e., behavioral unit, or a Traumatic Brain Injury (TBI) unit, etc., the following reimbursement methods will apply under the circumstances described Subsections 3101.08.a.i. through 3101.08.a.vi. of these rules. ~~(7-1-02)T~~(8-1-02)T

**i. Facility is Under the Direct Care Limit -** If the facility operates a special rate unit, the costs of which do not exceed the direct care limit, with all direct care costs included in the rate calculation, no special rate shall be paid for the unit. (3-15-02)

**ii. Facility is Over the Direct Care Limit -** If the facility operates a special rate unit, the costs of which exceed the direct care limit, with all direct care costs included in the rate calculation, the special rate for the unit will be equal to the lesser of the per diem amount by which direct care costs exceed the limit, or the special rate add-on calculated as follows: each Medicaid resident approved for a special rate is classified using Medicare's grouper

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(currently RUG's III v.5.12 44 Group) and is assigned a total rate equal to the applicable Medicare price that would be paid if the resident were Medicare eligible. The special rate "add-on" to the facility rate is calculated by subtracting the resident-specific Medicaid rate (based on each resident's Medicaid CMI) from the Medicare price. The average of the special rate add-on amounts calculated using this methodology shall be compared to the amount the provider is over the limit. The lesser amount is allowed as a special rate. (3-15-02)

iii. New Unit Added before July 1, 2000 - A unit added before July 1, 2000 that does not have sufficient historical cost data in the cost report used to set the rate shall receive the same rate that would have been set under the retrospective system until a cost report with sufficient cost detail is filed. (3-15-02)

iv. New Unit Added after July 1, 2000 - To qualify for special rates, new units, or increases to the number of licensed beds in an existing unit must first receive Departmental approval. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. Those residents who are approved for special rates will have their special rate calculated as the difference between the applicable Medicare price under PPS, and the Medicaid rate for that individual resident as explained in Section 3101.08.a.ii. of these rules. However, the amount would not be limited to the amount the provider is over the limit, as the costs of the unit are not in the rate calculation. ~~(3-15-02)~~(8-1-02)T

v. One Hundred Percent (100%) Special Care Facility in Existence as of July 1, 2000 - If at July 1, 2000 an entire facility is devoted to caring for "special rate" residents, including Medicaid residents approved for special rates as well as private pay and other residents who would qualify for special rates if they were Medicaid eligible, the facility's allowable reimbursement will be calculated as follows. The costs of the direct care component will not be subject to the cost limit. However, those costs will still be case-mix adjusted based on the ratio of the Medicaid case-mix to the facility-wide case-mix index. (3-15-02)

vi. Customary Charge - If the cost to operate a special rate unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for that unit on the quarterly reporting form. A weighted customary charge shall be computed by taking the number of Medicaid days approved for special rates times the usual and customary charge for private pay individuals in that unit, plus the Medicaid days not in the special rate unit times the usual and customary charge for that portion of the facility. (3-15-02)

b. Equipment/Non-Therapy Supplies. Equipment and non-therapy supplies not adequately addressed in the current RUG's system shall be reimbursed at invoice cost as an add-on to the facility's rate for the resident receiving the equipment or supplies. The facility need not exceed the direct care limit to receive a special rate for such services. Items that qualify for such treatment include but are not limited to the following: air fluidized beds, overlay mattresses, TPN supplies and VAC wound care. (3-15-02)

c. Ventilator Dependent Residents and Residents Receiving Tracheotomy Care. In the case of ventilator dependent and tracheotomy residents, a two (2) step approach shall be taken to establish the special rate. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheotomy care. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents. The add-on shall be calculated following the provisions set forth in Subsection 3101.08.d. of these rules. The second step shall be an equipment, supply, or both add-on to be added to the rate up to the invoice cost or rental amount. The combined amount of these two (2) components shall be considered the special rate. ~~(7-1-02)~~(8-1-02)T

d. Residents Who Do Not Reside in a Special Rate Unit Requiring One-to-One Staffing Ratios. Facilities that do not have established units with a cost history built into their cost reports and rates may at times have residents who require unusual levels of staffing; such as, one-to-one staffing ratios. If the resident qualifies for a special rate, the additional reimbursement will be allowed as follows:

Example Using Sixteen (16) Hours of One-To-One Care	
Total hours per day:	24.0
Less minimum staff level required:	(2.0)

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Example Using Sixteen (16) Hours of One-To-One Care	
Net special rate hours allowed:	22.0
Average wage rate of CNA's per WAHR survey:	\$7.53
Plus Benefits at Thirty percent (30%):	\$2.26
Allowed wages and Benefits	\$9.79
Allowable daily special rate add-on:	\$215.38
Divided by total hours:	24.0
Calculated hourly rate:	\$8.97
One to one hours approved:	16.0
Sixteen (16) hours of one to one add-on:	\$143.53

(3-15-02)

e. For differing levels of one-to-one care; i.e., eight (8) hours or twenty-four (24) hours, only the total hours of one-to-one care approved would be changed in Subsection 3101.08.d. The WAHR CNA wage rate as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 148 will be updated prior to the July 1st rate setting each year. Should the WAHR survey be discontinued, prior amounts may be indexed forward, or a comparable survey may be conducted. ~~(3-15-02)~~(8-1-02)T

**09. Treatment Of The Special Rate Cost For Future Rate Setting Periods.** Special rates shall be established on a prospective basis similar to the overall facility rate. When a cost report is used to set a prospective rate contains special rate cost, an adjustment shall be made to "offset", or remove, the amount received for the special rates from the calculation of costs. The amount received shall be calculated by multiplying the special rate paid for each qualifying resident by the number of days that were paid. The case-mix index for each resident shall be left in the facility-wide average and the Medicaid average for rate setting purposes, as the offset would only be for the incremental portion of the rate, above what Medicaid would have paid. (3-15-02)

### **3142. PHASE-IN PROVISIONS.**

The rates established pursuant to these rules shall be phased in over a three-year period as follows: (4-5-00)

**01. July 1, 1999 Through June 30, 2000.** During this period, providers will continue to be reimbursed under the previous retrospective system; however, the Department will also issue by January 1, 2000 "shadow rates" which will inform facilities what their rate would be under the provisions of these rules. (4-5-00)

**02. July 1, 2000 Through December 31, 2000.** Rates calculated under the provisions of these rules will be compared to the rates that were available to the same facility as of June 30, 1999. Facilities which would experience decreases in their rate of one dollar (\$1) or less per resident day will receive the rate established under the provisions of these rules with no phase-in. Facilities which would experience decreases in their rate of greater than one dollar (\$1) per resident day will have the decrease in their rate limited to the greater of one dollar (\$1) per resident day or twenty-five percent (25%) of the decrease. Facilities which would experience increases in their reimbursement rate will receive the increased rate. (4-5-00)

**03. January 1, 2001, Through June 30, 2001.** Rates calculated under the provisions of these rules will be compared to the rates that were available to the same facility as of June 30, 1999. Facilities which would experience decreases in their rate of two dollars (\$2) or less per resident day will receive the rate established under the provisions of these rules with no phase-in. Facilities which would experience decreases in their rate of greater than two dollars (\$2) per resident day will have the decrease in their rate limited to the greater of two dollars (\$2) per

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resident day or fifty percent (50%) of the decrease. Facilities which would experience increases in their reimbursement rate will receive the increased rate. (4-5-00)

**04. July 1, 2001.** Beginning with July 1, 2001, the rates established under the provisions of these rules will be fully implemented with no phase-in. (4-5-00)

#### **3123. OVERSIGHT COMMITTEE.**

The Director will appoint an oversight committee to monitor implementation of the Prospective Payment System (PPS) for nursing facility reimbursement that takes effect July 1, 1999. The committee will be made up of at least one (1) member representing each of the following organizations: the Department, the state association(s) representing free standing skilled care facilities, and the state association(s) representing hospital-based skilled care facilities. The committee will continue to meet periodically subsequent to the implementation of the PPS. After three (3) years of implementation, the committee will examine the inflation factors used to inflate costs forward for rate setting (DRI + one percent (+1%)), the inflation factors used in limiting the growth in the cost component limitations (DRI + two percent (+2%)), and the level of the minimum cost component limitations (not lower than limits established July 1, 1999). (4-5-00)

#### **3134. DISPUTES.**

**01. Administrative Review Requirement.** If any facility wishes to contest the way in which a rule or contract provision relating to the prospective, cost-related reimbursement system was applied to such facility by the Director, it shall first pursue the administrative review process set forth in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, Section 300, et seq., and Section 301, "Rules Governing Contested Cases Proceedings and Declaratory Rulings". ~~(12-31-91)~~(8-1-02)T

**02. Legal Challenge.** The administrative review process need not be exhausted if a facility wishes to challenge the legal validity of a statute, rule, or contract provision. (12-31-91)

#### **3145. DENIAL, SUSPENSION, REVOCATION OF LICENSE OR PROVISIONAL LICENSE -- PENALTY.**

The Director is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars (\$1,000) per violation in any case in which it finds that the facility, or any partner, officer, director, owner of five percent (5%) or more of the assets of the facility, or managing employee: (12-31-91)

**01. Failed Or Refused To Comply.** Failed or refused to comply with the requirements of Sections 56-101 through 56-135, Idaho Code, or the rules established hereunder; or (1-1-82)

**02. False Statements.** Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or (1-1-82)

**03. Refused To Allow Representative.** Refused to allow representatives or agents of the Director to inspect all books, records, and files required to be maintained by the provisions of this chapter or to inspect any portion of the facility's premises; or (1-1-82)

**04. Wilfully Prevented, Interfered With, Or Attempted To Impede Work.** Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the Director and the lawful enforcement of any provision of this chapter; or (1-1-82)

**05. Preservation Of Evidence.** Wilfully prevented or interfered with any representative of the Director in the preservation of evidence of any violation of any of the provisions of this chapter. (12-31-91)

**3156. -- 349. (RESERVED).**

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0302**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-101 through 135, 56-202, 56-203, 56-1003(1), 56-1004(1)(a), Idaho Code and 42 CFR Part 447.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 6, 2003, Administrative Bulletin, Volume 03-8, pages 95 through 97.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jan Uren at (208) 364-1840.

DATED this 22nd day of September, 2003.

Sherri Kovach  
Program Supervisor  
DHW - Administrative Procedures Section  
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### **IDAPA 16, TITLE 03, CHAPTER 10**

#### **RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 95 through 97.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0302

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective November 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-120, 56-202, 56-203, 56-1003(l), and 56-1004(l)(a), Idaho Code. Also, Title XIX (Medicaid) of the Social Security Act (see 42 CFR Section 447).

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

These rule changes are to implement a 3.5% holdback as directed by the Governor in Executive Orders 2002-08 and 2002-09: Reduction Of General Fund Spending Authority and required by the Idaho State Constitution. The annual aggregated interim rate changes are expected to lessen the effect of overpayments and underpayments to hospitals and to result in a cash flow savings for the Department and recoupment of potentially lost interest earnings.

The proposed changes will give the Department the ability to adjust the interim rate used by the Idaho Medicaid program to calculate the reimbursement amount to a hospital when the hospital's most recent cost settlement amount is equal to or greater than 10% of the payments received by the hospital and is equal to or greater than \$100,000. The interim rate will be adjusted to account for half of the difference in the over or under payment. The changes also give the Department the ability to adjust the interim rate of hospitals when the settlement amount is less than 10% of the payments received. In this case, the interim rate will be adjusted to account for half of the difference as well.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because rulemaking occurred to comply with executive mandate.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 27, 2003.

DATED this 18th day of June, 2003.

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**DEPARTMENT OF HEALTH AND WELFARE  
Medicaid Provider Reimbursement in Idaho**

**Docket No. 16-0310-0302  
Temporary and Proposed Rulemaking**

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0302

#### **453. ADJUSTMENTS TO THE TITLE XIX COST LIMIT.**

A hospital's request for review by the Bureau of Medicaid Policy and Reimbursement, or its successor, concerning an adjustment to or exemption from the cost limits imposed under the provisions set forth in Sections 450 through 499 of this chapter of rules, ~~shall~~ must be granted under the following circumstances (see also Section 500 of this chapter of rules): ~~(7-1-97)~~(11-1-02)T

**01. Adjustments.** Because of Extraordinary Circumstances. Where a provider's costs exceed the Title XIX limit due to extraordinary circumstances beyond the control of the provider, the provider can request an adjustment to the cost limit to the extent the provider proves such higher costs result from the extraordinary circumstances including, but not limited to, increased costs attributable to strikes, fires, earthquake, flood, or similar, unusual occurrences with substantial cost effects. (7-1-97)

**02. Reimbursement To Public Hospitals.** A Public Hospital that provides services free or at a nominal charge, which is less than, or equal to fifty percent (50%) of its total allowable costs, will be reimbursed at the same rate that would be used if the hospital's charges were equal to, or greater than, its costs. (7-1-97)

**03. Adjustment To Cost Limits.** A hospital shall be entitled to a reasonable increase in its Title XIX Cost limits if the hospital shows that its per diem costs of providing services have increased due to increases in case-mix, the adoption of new or changed services, the discontinuation of services or decrease in average length of stay for Medicaid inpatients since the Principal Year. Any hospital making such showing shall be entitled to an increase commensurate with the increase in per diem costs. (7-1-97)

**a.** The Title XIX operating cost limit may be adjusted by multiplying cost limit by the ratio of the Current Year's Case-Mix Index divided by the Principal Year's Case-Mix Index. (4-5-00)

**b.** The contested case procedure set forth in IDAPA 16.05.03.330.02, "Rules Governing Contested Case Proceedings and Declaratory Rulings," shall be available to larger hospitals seeking such adjustments to their Title XIX Cost Limits. (7-1-97)

~~**04. Hospitals With Forty Or Fewer Licensed And Medicare Certified Beds.** Hospitals with forty (40) or fewer licensed and Medicare certified beds, excluding nursery and neonatal intensive care bassinets, will be guaranteed one hundred percent (100%) of their allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. (7-1-97)~~

**054. Hospitals With More Than Forty Licensed And Medicare Certified Beds Medicaid Operating And Capital And Medical Education Costs.** ~~All H~~ hospitals with more than forty (40) licensed and Medicare certified beds will be guaranteed at least eighty percent (80%) of their total allowable Medicaid Operating and Capital and medical education costs upon final settlement excluding DSH payments. ~~(7-1-97)~~(11-1-02)T

**a.** With the exception of Subsection 453.054.b., at the time of final settlement, the allowable Medicaid costs related to each hospital's fiscal year end will be according to the Reimbursement Floor Percentage ~~defined for~~



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*each state fiscal year end.*

~~(7-1-97)~~(11-1-02)T

b. In the event that ~~HCEA~~ CMS informs the Department that total hospital payments under the Inpatient Operating Cost Limits exceed the inpatient Upper Payment Limit, the Department may reduce the guaranteed percentage defined as the Reimbursement Floor Percentage to hospitals ~~with more than forty (40) licensed and Medicare certified beds to the level of the previous year.~~

~~(7-1-97)~~(11-1-02)T

**065. Adjustment To The Proration Of Ancillary Costs In The Principal Year.** Where the provider asserts that the proration of ancillary costs does not adequately reflect the total Title XIX cost per diem calculated for the inpatient routine service cost centers in the principal year, the provider may submit a detailed analysis of ancillary services provided to each Title XIX recipient for each type of patient day during each recipient's stay during the principal year. The provider will be granted this adjustment only once upon appeal for the first cost reporting year that the limits are in effect.

(4-5-00)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 455. ORGAN TRANSPLANT AND PROCUREMENT REIMBURSEMENT.

Organ transplant and procurement services by facilities approved for kidneys, bone marrow, liver, or heart will be reimbursed the lesser of ~~one hundred ninety-six and a half percent (10096.5%)~~ of Reasonable Costs under Medicare payment principles or Customary Charges. Follow up care provided to an organ transplant patient by a provider not approved for organ transplants will be reimbursed at the provider's normal reimbursement rates. Reimbursement to Independent Organ Procurement Agencies and Independent Histocompatibility Laboratories will not be covered.

~~(7-1-97)~~(11-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 467. INTERIM REIMBURSEMENT RATES.

The interim reimbursement rates are reasonable and adequate to meet the necessary costs which must be incurred by economically and efficiently operated providers which provide services in conformity with applicable state and federal laws, rules, and quality and safety standards.

(7-1-97)

**01. Annual Adjustments.** Interim rates will be adjusted at least annually based on the best information available to the Department. The interim rate will reflect the Title XIX Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage.

~~(7-1-87)~~(11-1-02)T

~~a. For hospitals with more than forty (40) beds, the interim rate will reflect the Title XIX Inpatient Operating Cost Limits used to set inpatient rates and the Reimbursement Floor Percentage.~~

~~(7-1-97)~~

~~b. For hospitals with forty (40) or fewer beds, the interim rates will reflect one hundred percent (100%) of the Medicaid reasonable costs by determining the Medicaid cost-to-charge ratio from the most recent Medicare Cost Report submitted to the Department.~~

~~(7-1-97)~~

**02. Retrospective Adjustments.** Interim rates will not be adjusted retrospectively upon request for rate review by the provider.

(7-1-87)

**03. Basis For Adjustments.** The Department may make an adjustment based on the Medicare Cost Report as submitted and accepted by the Intermediary after the provider's reporting year to bring interim payments made during the period into agreement with the tentative reimbursable amount due the provider at final settlement. If the settlement amount is equal to or greater than ten percent (10%) of the payments received or paid and equal to or greater than one hundred thousand dollars (\$100,000), the interim rate will be adjusted to account for half (½) of the difference.

~~(7-1-97)~~(11-1-02)T

**04. Unadjusted Rate.** The Title XIX interim reimbursement rate on file is synonymous with the term unadjusted rate used by other payors.

(7-1-97)

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**DOCKET NO. 16-0310-0303**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202 and 56-117, Idaho Code.

**DESCRIPTIVE SUMMARY:** The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. The pending rules are being amended to clarify the that no occupancy adjustment will be made against costs that are used to calculate the property rate rental, but adjustments will be made against all other property costs. Section 351 was originally proposed to be deleted, but is being amended to state all financial reports are subject to audit. Section 454 is being amended to clarify the Department will send a notice with the preliminary calculation for the DSH payment by July 15 and the hospital may file an amended survey within 30 days of receiving the notice.

Only sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the October 1, 2003 Administrative Bulletin, Volume 03-10, pages 287 through 292.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jan Uren at (208) 364-1854.

DATED this 13th day of November, 2003.

Sherri Kovach, Program Supervisor  
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### **IDAPA 16, TITLE 03, CHAPTER 10**

#### **RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 287 through 292.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

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*Language That Has Been Deleted From The Original Proposed Rule  
Has Been Removed And New Language Is Shown In Italics*

### THE FOLLOWING IS THE AMENDED TEXT FOR DOCKET 16-0310-0303

#### SECTION 123 and SUBSECTION 123.01 (Partial Section)

##### 123. OCCUPANCY ADJUSTMENT FACTOR.

In order to equitably allocate fixed costs to the Medicaid patients in cases where a facility is not maintaining reasonable occupancy levels, an adjustment will be made. No occupancy adjustment will be made against ~~property reimbursement paid in lieu of the costs that are used to calculate the property rental rate; however adjustment will be made against all other~~ property costs. The adjustment will be made as follows: ~~(+1-4-85)( )~~

**01. Occupancy Levels.** If a facility maintains an average occupancy of less than eighty percent (80%) of a facility's capacity, the total property costs ~~not including cost paid under the property rental rate~~, will be prorated based upon an eighty percent (80%) occupancy rate. Property costs and property rental rates are defined in Section 004 of these rules. The facility's average occupancy percentage will be subtracted from eighty percent (80%) and the resultant percentage will be taken times the total fixed costs to determine the nonallowable fixed costs. ~~(+1-1-82)( )~~

#### SECTION 351 (Entire Section)

##### 351. AUDIT PRINCIPLE.

~~All financial reports will be subject to audit in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.02, "Rules Governing Audits of Providers"~~ All financial reports will be subject to audit. ~~(+4-28-89)( )~~

#### SUBSECTION 454.01 (Partial Section)

##### 454. ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS (DSH).

All hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. ~~(7-1-97)~~

**01. DSH Survey Requirements.** ~~On or before January 31, of each calendar year, the Department will send each hospital a DSH Survey. Each hospital shall return the DSH Survey on or before May 31 of the same calendar year. A hospital shall not be entitled to a DSH payment if the hospital fails to return the DSH Survey by the May 31 deadline without good cause as determined by the Department. From the DSH Survey and Department data, payments distributing the state's annual DSH allotment amount will be made by September 30 of the same calendar year.~~ The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. No later than July 15 of each calendar year, the Department must notify each hospital of their calculated DSH payment and notify each hospital of its preliminary calculated distribution amount. A hospital may file an amended survey to complete, correct, or revise the original DSH survey by submitting the amended survey and supporting documentation to the Department no later than thirty (30) days after the notice of the preliminary DSH calculation is mailed to the hospital. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data. ~~(7-1-97)( )~~

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### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

##### DOCKET NO. 16-0310-0303

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56, 102, 56-202, and 56-117, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

These rules are being amended to provide clarification to providers. Section 123 is being amended to clarify occupancy levels for facilities maintaining less than 80% occupancy rates. Section 311 is being amended to provide that special rates may be effective up to thirty (30) days prior to when the application is received. Section 351 is being deleted. Section 454 is being amended to clarify amending the Disproportionate Share Hospitals (DSH) surveys before final determinations of DSH payments are made.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rule amendments are for clarification only.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Jan Uren at (208) 364-1854.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 14th day of August, 2003.

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0310-0303

##### **123. OCCUPANCY ADJUSTMENT FACTOR.**

In order to equitably allocate fixed costs to the Medicaid patients in cases where a facility is not maintaining reasonable occupancy levels, an adjustment will be made. No occupancy adjustment will be made against property reimbursement paid in lieu of property costs. The adjustment will be made as follows: (11-4-85)

- 01. Occupancy Levels.** If a facility maintains an average occupancy of less than eighty percent (80%)

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of a facility's capacity, the total property costs not including cost paid under the rental rate, will be prorated based upon an eighty percent (80%) occupancy rate. Property cost and rental rates are defined in Section 004 of these rules. The facility's average occupancy percentage will be subtracted from eighty percent (80%) and the resultant percentage will be taken times the total fixed costs to determine the nonallowable fixed costs. ~~(1-1-82)~~(\_\_\_\_)

**02. Occupancy Adjustment.** For purposes of an occupancy adjustment, facility capacity will be computed based upon the greater of the largest number of beds for which the facility was licensed during the period being reported on or the largest number of beds for which the facility was licensed during calendar year 1981, except where a portion of the facility has been converted to use for nonroutine nursing home activities or the facility is newly constructed and has entered the Medicaid Program subsequent to January 1, 1982. If the facility's designed capacity has been changed, the number of beds used to determine occupancy will be lowered by the amount of capacity being converted to nonroutine nursing home activities. Facility capacity for a new facility will be based on the number of beds approved by the certificate of need process less any capacity converted to nonroutine nursing home activities. (1-1-82)

**03. Fixed Costs.** For purposes of an occupancy adjustment fixed costs shall be considered all allowable and reimbursable costs reported under the property cost categories. (11-4-85)

**04. Change In Designed Capacity.** In cases where a provider changes the designed capacity of a facility, the average occupancy for the period prior to the change and subsequent to the change will be computed and each period will be adjusted separately. If the designed capacity is increased, the increased number of beds will not be subject to this adjustment for the first six (6) months following their licensure. (1-1-82)

**05. New Facility.** In the case of a new facility being licensed and occupied, the first six (6) months occupancy level will not be subject to this adjustment. (1-1-82)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 311. SPECIAL RATES.

Section 56-117, Idaho Code, provides authority for the Director to pay facilities a special rate for care given to patients who have long term care needs beyond the normal scope of facility services. These patients must have needs which are not adequately reflected in the rates calculated pursuant to the principles set forth in Section 56-102, Idaho Code. The payment for such specialized care will be in addition to any payments made in accordance with other provisions of this chapter. The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of this section will be excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules. (4-5-00)

**01. Determinations.** A determination to approve or not approve a special rate will be made on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request will be for an expected condition that will be on-going for a period of greater than two (2) weeks. (4-5-00)

**02. Application.** Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in Section 56-102, Idaho Code. (4-5-00)

**03. ~~Approval Effective Date.~~ Approved Upon approval.** special rates will become effective on the date the application is received, ~~but no earlier than the first day of the month in which~~ unless the provider requests a retroactive effective date. Special rates may be retroactive for up to thirty (30) days prior to receipt of the application for a special rate was received. ~~(4-5-00)~~(\_\_\_\_)

**04. Reporting.** Costs equivalent to payments at the special rate will be removed from the cost components subject to limits, and will be reported separately. (4-5-00)

**05. Limitation.** The reimbursement rate paid will not exceed the provider's charges to other patients for similar services. (4-5-00)

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**06. Prospective Rate Treatment.** Prospective treatment of special rates became effective July 1, 2000. Subsections 311.07 through 311.09 of these rules provide clarification of how special rates will be handled under the prospective payment system. (8-1-02)T

**07. Residents Qualifying.** Special rates are intended for residents who have long term care needs beyond the normal scope of facility services, and whose needs are not adequately reflected in the rates set pursuant to Section 56-102, Idaho Code. (3-15-02)

**08. Determination Of Payment For Qualifying Residents.** Special rates shall be reimbursed in one (1) of the methods described in Subsections 311.08.a. through 311.08.d. of these rules. (8-1-02)T

**a. Special Rate Units.** If a facility operates a special rate unit; i.e., behavioral unit, or a Traumatic Brain Injury (TBI) unit, etc., the following reimbursement methods will apply under the circumstances described Subsections 311.08.a.i. through 311.08.a.vi. of these rules. (8-1-02)T

**i. Facility is Under the Direct Care Limit -** If the facility operates a special rate unit, the costs of which do not exceed the direct care limit, with all direct care costs included in the rate calculation, no special rate shall be paid for the unit. (3-15-02)

**ii. Facility is Over the Direct Care Limit -** If the facility operates a special rate unit, the costs of which exceed the direct care limit, with all direct care costs included in the rate calculation, the special rate for the unit will be equal to the lesser of the per diem amount by which direct care costs exceed the limit, or the special rate add-on calculated as follows: each Medicaid resident approved for a special rate is classified using Medicare's grouper (currently RUG's III v.5.12 44 Group) and is assigned a total rate equal to the applicable Medicare price that would be paid if the resident were Medicare eligible. The special rate "add-on" to the facility rate is calculated by subtracting the resident-specific Medicaid rate (based on each resident's Medicaid CMI) from the Medicare price. The average of the special rate add-on amounts calculated using this methodology shall be compared to the amount the provider is over the limit. The lesser amount is allowed as a special rate. (3-15-02)

**iii. New Unit Added Before July 1, 2000 -** A unit added before July 1, 2000 that does not have sufficient historical cost data in the cost report used to set the rate shall receive the same rate that would have been set under the retrospective system until a cost report with sufficient cost detail is filed. (3-15-02)

**iv. New Unit Added after July 1, 2000 -** To qualify for special rates, new units, or increases to the number of licensed beds in an existing unit must first receive Departmental approval. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. Those residents who are approved for special rates will have their special rate calculated as the difference between the applicable Medicare price under PPS, and the Medicaid rate for that individual resident as explained in Section 311.08.a.ii. of these rules. However, the amount would not be limited to the amount the provider is over the limit, as the costs of the unit are not in the rate calculation. (8-1-02)T

**v. One Hundred Percent (100%) Special Care Facility in Existence as of July 1, 2000 -** If at July 1, 2000 an entire facility is devoted to caring for "special rate" residents, including Medicaid residents approved for special rates as well as private pay and other residents who would qualify for special rates if they were Medicaid eligible, the facility's allowable reimbursement will be calculated as follows. The costs of the direct care component will not be subject to the cost limit. However, those costs will still be case-mix adjusted based on the ratio of the Medicaid case-mix to the facility-wide case-mix index. (3-15-02)

**vi. Customary Charge -** If the cost to operate a special rate unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for that unit on the quarterly reporting form. A weighted customary charge shall be computed by taking the number of Medicaid days approved for special rates times the usual and customary charge for private pay individuals in that unit, plus the Medicaid days not in the special rate unit times the usual and customary charge for that portion of the facility. (3-15-02)

**b. Equipment/Non-Therapy Supplies.** Equipment and non-therapy supplies not adequately addressed in the current RUG's system shall be reimbursed at invoice cost as an add-on to the facility's rate for the resident

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receiving the equipment or supplies. The facility need not exceed the direct care limit to receive a special rate for such services. Items that qualify for such treatment include but are not limited to the following: air fluidized beds, overlay mattresses, TPN supplies and VAC wound care. (3-15-02)

c. Ventilator Dependent Residents and Residents Receiving Tracheotomy Care. In the case of ventilator dependent and tracheotomy residents, a two (2) step approach shall be taken to establish the special rate. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheotomy care. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents. The add-on shall be calculated following the provisions set forth in Subsection 311.08.d. of these rules. The second step shall be an equipment, supply, or both add-on to be added to the rate up to the invoice cost or rental amount. The combined amount of these two (2) components shall be considered the special rate. (8-1-02)T

d. Residents Who Do Not Reside in a Special Rate Unit Requiring One-to-One Staffing Ratios. Facilities that do not have established units with a cost history built into their cost reports and rates may at times have residents who require unusual levels of staffing; such as, one-to-one staffing ratios. If the resident qualifies for a special rate, the additional reimbursement will be allowed as follows:

Example Using Sixteen (16) Hours of One-To-One Care	
Total hours per day:	24.0
Less minimum staff level required:	(2.0)
Net special rate hours allowed:	22.0
Average wage rate of CNA's per WAHR survey:	\$7.53
Plus benefits at thirty percent (30%):	\$2.26
Allowed wages and benefits:	\$9.79
Allowable daily special rate add-on:	\$215.38
Divided by total hours:	24.0
Calculated hourly rate:	\$8.97
One to one hours approved:	16.0
Sixteen (16) hours of one to one add-on:	\$143.53

(3-15-02)

e. For differing levels of one-to-one care; i.e., eight (8) hours or twenty-four (24) hours, only the total hours of one-to-one care approved would be changed in Subsection 311.08.d. The WAHR CNA wage rate as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 148 will be updated prior to the July 1st rate setting each year. Should the WAHRS survey be discontinued, prior amounts may be indexed forward, or a comparable survey may be conducted. (8-1-02)T

**09. Treatment Of The Special Rate Cost For Future Rate Setting Periods.** Special rates shall be established on a prospective basis similar to the overall facility rate. When a cost report is used to set a prospective rate contains special rate cost, an adjustment shall be made to "offset," or remove, the amount received for the special rates from the calculation of costs. The amount received shall be calculated by multiplying the special rate paid for each qualifying resident by the number of days that were paid. The case-mix index for each resident shall be left in the facility-wide average and the Medicaid average for rate setting purposes, as the offset would only be for the incremental portion of the rate, above what Medicaid would have paid. (3-15-02)

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### (BREAK IN CONTINUITY OF SECTIONS)

**351. PRINCIPLE (RESERVED).**

*All financial reports will be subject to audit in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.02, "Rules Governing Audits of Providers".* (4-28-89)

### (BREAK IN CONTINUITY OF SECTIONS)

**454. ADJUSTMENT FOR DISPROPORTIONATE SHARE HOSPITALS (DSH).**

All hospitals serving a disproportionate share of low income patients must qualify either as a Mandatory DSH or as Deemed DSH to receive a DSH payment. (7-1-97)

**01. DSH Survey Requirements.** *On or before January 31, of each calendar year, the Department will send each hospital a DSH Survey. Each hospital shall return the DSH Survey on or before May 31 of the same calendar year. A hospital shall not be entitled to a DSH payment if the hospital fails to return the DSH Survey by the May 31 deadline without good cause as determined by the Department. From the DSH Survey and Department data, payments distributing the state's annual DSH allotment amount will be made by September 30 of the same calendar year. The Department will send each hospital a DSH survey on or before January 31 of each calendar year. The DSH survey must be returned to the Department on or before May 31 of the same calendar year. A hospital will not receive a DSH payment if the survey is not returned by the deadline, unless good cause is determined by the Department. The Department must notify each hospital of their calculated DSH payment no later than July 15 of each calendar year. When a hospital intends to file an amended survey to complete, correct, or revise the original survey, the requested revision with supporting documentation must be received by the Department within thirty (30) days of the notice of the calculated payment. The state's annual DSH allotment payment will be made by September 30 of the same calendar year based on the final DSH surveys and Department data.* (7-1-97)(\_\_\_\_)

**02. Mandatory Eligibility.** Mandatory Eligibility for DSH status shall be provided for hospitals which: (4-5-00)

- a.** Meet or exceed the disproportionate share threshold as defined in Subsection 451.13. (7-1-97)
- b.** Have at least two (2) obstetricians with staff privileges at the hospital who have agreed to provide obstetric services, and have provided such services to individuals entitled to such services under the Idaho Medical Assistance Program for the reporting period. (4-5-00)
  - i.** Subsection 454.02.b. does not apply to a hospital in which the inpatients are predominantly individuals under eighteen (18) years of age; or (7-1-97)
  - ii.** Does not offer nonemergency inpatient obstetric services as of December 21, 1987. (7-1-88)
  - c.** The MUR shall not be less than one percent (1%). (7-1-97)
  - d.** If a hospital exceeds both disproportionate share thresholds, set forth in Subsection 451.13, and the criteria of Subsections 454.02.b. and 454.02.c. are met, the payment adjustment will be the greater of the amounts calculated using the methods identified in Subsections 454.02 f. through 454.02.j. (7-1-97)
  - e.** In order to qualify for a DSH payment, a hospital located outside the state of Idaho shall: (7-1-97)
    - i.** Qualify under the mandatory DSH requirements set forth in this Section; (7-1-97)
    - ii.** Qualify for DSH payments from the state in which the hospital is located; and (7-1-97)
    - iii.** Have fifty thousand dollars (\$50,000) or more in covered charges for services provided to Idaho



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recipients during the year covered by the applicable DSH Survey. (4-5-00)

**f.** Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one (1) standard deviation and less than one and one-half (1 1/2) standard deviations above the mean of all Idaho hospitals shall receive a DSH payment equal to two percent (2%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

**g.** Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates equal to or exceeding one and one-half (1 1/2) standard deviations and less than two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

**h.** Hospitals qualifying for Mandatory DSH eligibility with Medicaid Inpatient Utilization Rates exceeding two (2) standard deviations of the mean of all Idaho hospitals shall receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

**i.** Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to or exceeding twenty-five percent (25%) shall receive a DSH payment equal to four percent (4%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

**j.** Hospitals qualifying for Mandatory DSH eligibility with Low Income Utilization Rates equal to, or exceeding, thirty percent (30%) shall receive a DSH payment equal to six percent (6%) of the payments related to the Medicaid inpatient days included in the MUR computation. (4-5-00)

**03. Out-Of-State Hospitals Eligible For Mandatory DSH Payments.** Out-of-state hospitals eligible for Mandatory DSH payments will receive DSH payments equal to one half (1/2) of the percentages provided for Idaho hospitals in Subsections 454.02.d. through 454.02.j. (7-1-97)

**04. Deemed Disproportionate Share Hospital (DSH).** All hospitals in Idaho which have inpatient utilization rates of at least one percent (1%) only in Idaho inpatient days, and meet the requirements unrelated to patient day utilization specified in Subsection 454.02, will be designated a Deemed Disproportionate Share Hospital. Out of state hospitals will not be designated as Deemed DSH. The disproportionate share payment to a Deemed DSH hospital shall be the greater of: (7-1-97)

**a.** Five dollars (\$5) per Idaho Medicaid inpatient day included in the hospital's MUR computation; or (4-5-00)

**b.** An amount per Medicaid inpatient day used in the hospital's MUR computation that equals the DSH Allotment Amount, less the Mandatory DSH payment amount, divided by the number of Medicaid inpatient days used in the MUR computation for all Idaho DSH hospitals. (7-1-97)

**05. Insufficient DSH Allotment Amounts.** When the DSH Allotment Amount is insufficient to make the aggregate amount of DSH payments to each DSH hospital, payments to each hospital will be reduced by the percentage by which the DSH Allotment Amount was exceeded. (4-5-00)

**06. DSH Payments Will Not Exceed Costs.** A DSH payment will not exceed the costs incurred during the year of furnishing services to individuals who are either eligible for medical assistance under the state plan or were uninsured for health care services provided during the year. (7-1-97)

**a.** Payments made to a hospital for services provided to indigent patients by a state or a unit of local government within a state shall not be considered a source of third party payment. (7-1-97)

**b.** Claims of uninsured costs which increase the maximum amount which a hospital may receive as a DSH payment must be documented. (4-5-00)

**07. DSH Will Be Calculated On An Annual Basis.** A change in a provider's allowable costs as a result of a reopening or appeal will not result in the recomputation of the provider's annual DSH payment. (4-5-00)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES**

**DOCKET NO. 16-0313-0301**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is October 1, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In response to comments received in the hearings held in October, and comments received from the public and Department staff, additions and corrections have been made to the definitions section of this chapter of rules and other minor changes have been made for clarification.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the September 3, 2003, Administrative Bulletin, Volume 03-9, pages 126 through 137.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mary Wells at (208) 364-1840 or Jean Christensen at (208) 364-1973.

DATED this 19th day of November, 2003.

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## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16, TITLE 03, CHAPTER 13

#### PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, pages 126 through 137.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0313-0301

##### *SUBSECTION 001.02 (Partial Section)*

###### **001. TITLE, POLICY AND SCOPE.**

**02. Policy And Scope.** The policy is to assure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of services, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. The implementation process for prior authorization of behavioral health will begin for new persons with their initial plans and for persons with existing plans at their annual plan date. Implementation of these new authorization processes will take one (1) full year to complete, beginning with annual plans expiring in March of 2004 and ending with annual plans expiring in February 2005. Persons that have not transitioned into the new prior authorization process will use the process in effect as of September 30, 2003, until their annual plan expires and comes up for annual review using the new processes. The scope of these rules defines prior authorization for the following Medicaid behavioral health services for adults:

~~(10-1-03)~~(10-1-03)T

##### *SUBSECTION 003.01 (Partial Section)*

###### **003. RECONSIDERATIONS, COMPLAINTS, AND ADMINISTRATIVE APPEALS.**

**01. Reconsideration.** Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a reconsideration within thirty (30) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team as determined by the Department with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision within fifteen (15) days of receipt of the request.

~~(10-1-03)~~(10-1-03)T

##### *SUBSECTIONS 010.03 through 010.13 (Partial Section)*

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### 010. DEFINITIONS (A THROUGH L).

For the purposes of these rules the following terms are used as defined below:

(10-1-03)T

~~03. Assessor. A contractor that has no financial interest in the provision of Medicaid behavioral health care services and is responsible for conducting an assessment for services as well as authorization of services.~~

~~(10-1-03)T~~

**043. Budget.** The level of financial support that corresponds to a participant's assessed needs, level of support determined by the SIB-R, and the past three (3) years' expenditures, when available. Using this information, the budget is negotiated with the plan developer, the participant, and the assessor.

~~(10-1-03)T~~(10-1-03)T

~~05. Care Manager. A Department employee who conducts clinical evaluations for the completion of exception reviews, concurrent reviews, crisis authorizations, and reconsiderations of decisions.~~

~~(10-1-03)T~~

**064. Clinical Review.** A process of professional review that validates the need for continued services.

(10-1-03)T

~~075. Community Crisis Support.~~ Intervention for participants who are at risk of losing housing, employment or income, or who are at risk of incarceration, physical harm, family altercations or other emergencies.

(10-1-03)T

~~086. Concurrent Review.~~ A clinical review to determine the need for continued prior authorization of services.

(10-1-03)T

~~097. Customer.~~ Any stakeholder with the exception of the participant.

(10-1-03)T

~~408. Department.~~ The Idaho Department of Health and Welfare.

(10-1-03)T

~~409. Developmental Disability.~~ A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person that appears before the age of twenty-two (22) years of age and:

(10-1-03)T

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and

(10-1-03)T

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity:

(10-1-03)T

i. Self-care;

(10-1-03)T

ii. Receptive and expressive language;

(10-1-03)T

iii. Learning;

(10-1-03)T

iv. Mobility;

(10-1-03)T

v. Self-direction;

(10-1-03)T

vi. Capacity for independent living; or

(10-1-03)T

vii. Economic self-sufficiency; and

(10-1-03)T

c. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated.

(10-1-03)T

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**120. Exception Review.** A clinical review of a plan that falls outside the established standards. (10-1-03)T

~~**13. Independent Assessment Provider (IAP) Or Assessor.** See definition for Assessor in Section 010 of these rules. (10-1-03)T~~

**11. Interdisciplinary Team.** For purposes of these rules, the interdisciplinary team is a team of professionals, determined by the Department, that reviews requests for reconsideration. (10-1-03)T

**142. Intermediate Care Facility For Persons With Mental Retardation (ICF/MR).** An intermediate care facility whose primary purpose is to provide habilitative services and maintain optimal health status for individuals with mental retardation or persons with related conditions. (10-1-03)T

**153. Level Of Support.** An assessment score derived from the SIB-R that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (10-1-03)T

### SUBSECTIONS 011.03 through 011.19 (Partial Section)

**011. DEFINITIONS (M THROUGH Z).**  
For the purposes of these rules the following terms are used as defined below: (10-1-03)T

~~**03. Person-Centered Planning Process.** A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer. A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (10-1-03)T(10-1-03)T~~

~~**04. Person-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (10-1-03)T~~

~~**045. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (10-1-03)T~~

~~**056. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T(10-1-03)T~~

~~**067. Plan Monitor Summary.** A summary that provides information to evaluate plans and initiate action to resolve any concerns. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status reviews referred to in Subsection 300.06 of these rules. The plan monitor will use the provider information to evaluate plans and initiate action to resolve any concerns. (10-1-03)T~~

~~**078. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T~~

~~**089. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (10-1-03)T~~

~~**0910. Provider Status Review.** The written documentation that identifies the participant's progress~~

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toward goals defined in the plan of service. (10-1-03)T

**141. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (10-1-03)T

**142. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (10-1-03)T

**143. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (10-1-03)T

**144. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (10-1-03)T

**145. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**146. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**147. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (10-1-03)T

**148. SIB-R.** The Scales of Independent Behavior - Revised (SIB-R) is a standardized assessment tool evaluating functional skill levels and evaluating maladaptive behavior. The SIB-R is used by the Department or its designee to determine waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant budget. (10-1-03)T

**149. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

### **SECTION 100 (Partial Section)**

#### **100. DETERMINATION OF PROGRAM ELIGIBILITY FOR ADULTS WITH A DEVELOPMENTAL DISABILITY.**

The Department will make the final determination of an individual's eligibility, based upon the assessments and evaluations administered by the Department or its designee. Initial and annual assessments must be performed by the Department or its designee. The purpose of the assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402(4), Idaho Code, and for ICF/MR level of care for waiver services in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 610 through 615. ~~(10-1-03)T~~ (10-1-03)T

### **SUBSECTIONS 300.05.d. and e. and 300.06 (Partial Section)**

#### **300. PLAN OF SERVICE.**

In collaboration with the participant, the Department or its designee must assure that the participant has one (1) plan of service. This plan of service is based on the negotiated participant budget referred to in Section 210 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (10-1-03)T

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**05. Plan Monitoring.** The participant, service coordinator or ~~paid~~ plan monitor must monitor the plan. The plan developer is the plan monitor unless there is a service coordinator, in which case the service coordinator assumes the roles of both service coordinator and plan monitor. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following:

~~(10-1-03)F~~(10-1-03)T

**d.** Review provider status reviews and complete a plan monitor summary after the six (6) month review and for annual plan development.

~~(10-1-03)F~~(10-1-03)T

**e.** Immediately report all allegations or suspicions of mistreatment, abuse, neglect, or exploitation, as well as injuries of unknown origin to the agency administrator, the Regional Medicaid Services (RMS), the adult protection authority, and any other entity identified under Section 39-5303, Idaho Code, or federal law.

(10-1-03)T

**06. Provider Status Reviews.** Service providers, with exceptions identified in Section 340 of these rules, must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include:

~~(10-1-03)F~~(10-1-03)T

### SECTION 330 (Entire Section)

#### 330. INFORMED CONSENT.

Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team.

(10-1-03)T

~~**01. No Guardian.** If the participant has no guardian or if the guardian is not readily available, service coordination must be provided to coordinate and monitor services unless the participant chooses not to receive that service.~~

~~(10-1-03)F~~

~~**02. Paid Provider.** If a paid provider is the guardian, there must be a service coordinator who is not the guardian, to coordinate and monitor services.~~

~~(10-1-03)F~~

### SUBSECTION 340.03 (Partial Section)

#### 340. PROVIDER IMPLEMENTATION PLAN.

Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service.

(10-1-03)T

**03. Documentation Of Changes.** Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers (where applicable), the date the change was made, the signature of the person making the change complete with the date and title.

(10-1-03)T

### SECTION 400.03 (Partial Section)

#### 400. COMMUNITY CRISIS SUPPORTS.

Community crisis supports are interventions for participants who have been determined eligible for developmental

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**Behavioral Health Services**

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**Amendment to Temporary Rule**

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disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (10-1-03)T

**03. Crisis Resolution Plan.** After community crisis support has been provided, the provider of the community crisis support service must complete a crisis resolution plan and submit it to the Department for approval within three (3) business days. (10-1-03)T



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### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES

DOCKET NO. 16-0313-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This new chapter of rules covers prior authorization for Developmental Disability (DD) program services for eligible adults that are reimbursed by Idaho Medicaid. These include: Home and Community Based Services (HCBS) Waiver services for the Developmentally Disabled and for Idaho State School and Hospital (ISSH) Waiver participants, Targeted Service Coordination, and Developmental Disability Agency (DDA) services for adults.

These rules require an assessment of the individuals seeking any of the above-mentioned services. Based on the findings of the assessment, a participant budget is established for each participant. Participants, their representatives, or both, will negotiate for the type and amount of services they require and desire. The Department or its designee will authorize the medically necessary services, reauthorize such services at least annually, and regularly conduct quality improvement reviews.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding the proposed rule. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

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Sherri Kovach, Administrative Procedures Coordinator  
DHW - Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax / kovachs@idhw.state.id.us e-mail

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0313-0301

#### **IDAPA 16** **TITLE 03** **CHAPTER 13**

#### **16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES**

##### **000. LEGAL AUTHORITY.**

The Idaho Department of Health and Welfare has the authority to promulgate rules governing prior authorization under Sections 56-202(b) and 56-203(g), Idaho Code. (10-1-03)T

##### **001. TITLE, POLICY AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services". (10-1-03)T

**02. Policy And Scope.** The policy is to assure the provision of the right care, in the right place, at the right price, and with the right outcomes in order to enhance health and safety, and to promote participants' rights, self-determination, and independence. Prior authorization involves the assessment of the need for services, development of a budget, development of a plan of services, prior approval of services, and a quality improvement program. Services are reimbursable if they are identified on the authorized plan of service and are consistent with the purpose and rule for prior authorization as well as rules for the specific service. The scope of these rules defines prior authorization for the following Medicaid behavioral health services for adults: (10-1-03)T

**a.** DD/ISSH Waiver services as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143; and (10-1-03)T

**b.** Developmental Disability Agency services as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 120 and IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies"; and (10-1-03)T

**c.** Service Coordination for persons with developmental disabilities as described at IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. (10-1-03)T

##### **002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

##### **003. RECONSIDERATIONS, COMPLAINTS, AND ADMINISTRATIVE APPEALS.**

**01. Reconsideration.** Participants with developmental disabilities who are adversely affected by a Department decision regarding program eligibility and authorization of services under these rules may request a

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reconsideration within thirty (30) days from the date the decision was mailed. The reconsideration must be performed by an interdisciplinary team with at least one (1) individual who was not involved in the original decision. The reviewers must consider all information and must issue a written decision within fifteen (15) days of receipt of the request. (10-1-03)T

**02. Complaints.** Participant complaints about the assessment process, eligibility determination, plan development, quality of service, and other relevant concerns may be referred to the Division of Medicaid, Bureau of Care Management. (10-1-03)T

**03. Administrative Appeals.** Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (10-1-03)T

**004. INCORPORATION BY REFERENCE.**

The Department has incorporated by reference the following document: (10-1-03)T

**01. SIB-R Comprehensive Manual.** Scales of Independent Behavior - Revised Comprehensive Manual, 1996, Riverside Publishing Co, 425 Spring Lake Drive, Itasca, IL 60143-2079. (10-1-03)T

**02. Availability Of Incorporated Documents.** A copy is available for public review at the Department of Health and Welfare, 450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-03)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "<http://www2.state.id.us/dhw/>". (10-1-03)T

**006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS (A THROUGH L).**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Adult.** A person who is eighteen (18) years of age or older or an ISSH Waiver participant. (10-1-03)T

**02. Assessment.** A process that is described in Section 100 of these rules for program eligibility and in Section 200 of these rules for plan of service. (10-1-03)T

**03. Assessor.** A contractor that has no financial interest in the provision of Medicaid behavioral health care services and is responsible for conducting an assessment for services as well as authorization of services. (10-1-03)T

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**04. Budget.** The level of financial support that corresponds to a participant's assessed needs, level of support determined by the SIB-R, and the past three (3) years' expenditures, when available. Using this information, the budget is negotiated with the plan developer, participant, and assessor. (10-1-03)T

**05. Care Manager.** A Department employee who conducts clinical evaluations for the completion of exception reviews, concurrent reviews, crisis authorizations, and reconsiderations of decisions. (10-1-03)T

**06. Clinical Review.** A process of professional review that validates the need for continued services. (10-1-03)T

**07. Community Crisis Support.** Intervention for participants who are at risk of losing housing, employment or income, or who are at risk of incarceration, physical harm, family altercations or other emergencies. (10-1-03)T

**08. Concurrent Review.** A clinical review to determine the need for continued prior authorization of services. (10-1-03)T

**09. Customer.** Any stakeholder with the exception of the participant. (10-1-03)T

**10. Department.** The Idaho Department of Health and Welfare. (10-1-03)T

**11. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person that appears before the age of twenty-two (22) years of age and: (10-1-03)T

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (10-1-03)T

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: (10-1-03)T

i. Self-care; (10-1-03)T

ii. Receptive and expressive language; (10-1-03)T

iii. Learning; (10-1-03)T

iv. Mobility; (10-1-03)T

v. Self-direction; (10-1-03)T

vi. Capacity for independent living; or (10-1-03)T

vii. Economic self-sufficiency; and (10-1-03)T

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (10-1-03)T

**12. Exception Review.** A clinical review of a plan that falls outside the established standards. (10-1-03)T

**13. Independent Assessment Provider (IAP) Or Assessor.** See definition for Assessor in Section 010 of these rules. (10-1-03)T

**14. Intermediate Care Facility For Persons With Mental Retardation (ICF/MR).** An intermediate

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care facility whose primary purpose is to provide habilitative services and maintain optimal health status for individuals with mental retardation or persons with related conditions. (10-1-03)T

**15. Level Of Support.** An assessment score derived from the SIB-R that indicates types and amounts of services and supports necessary to allow the individual to live independently and safely in the community. (10-1-03)T

**011. DEFINITIONS (M THROUGH Z).**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Medical Necessity.** A service is medically necessary if: (10-1-03)T

**a.** It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (10-1-03)T

**b.** There is no other equally effective course of treatment available or suitable for the participant requesting the service which is more conservative or substantially less costly. (10-1-03)T

**c.** Medical services must be of a quality that meets professionally recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (10-1-03)T

**02. Participant.** A person who receives health care services and is eligible for Medicaid. (10-1-03)T

**03. Person-Centered Planning Process.** A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer. (10-1-03)T

**04. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (10-1-03)T

**05. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T

**06. Plan Monitor Summary.** A summary that provides information to evaluate plans and initiate action to resolve any concerns. The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status reviews referred to in Subsection 300.06 of these rules. The plan monitor will use the provider information to evaluate plans and initiate action to resolve any concerns. (10-1-03)T

**07. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T

**08. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (10-1-03)T

**09. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**10. Right Care.** Accepted treatment for defined diagnosis, functional needs and abilities to achieve the desired outcome. The right care is consistent with best practice and continuous quality improvement. (10-1-03)T

**11. Right Place.** Services delivered in the most integrated setting in which they normally occur, based on the participant's choice to promote independence. (10-1-03)T

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**12. Right Price.** The most integrated and least expensive services that are sufficiently intensive to address the participant's needs. The amount is based on the individual's needs for services and supports as identified in the assessment. (10-1-03)T

**13. Right Outcomes.** Services based on assessed need that ensure the health and safety of the participant and result in progress, maintenance, or delay or prevention of regression for the participant. (10-1-03)T

**14. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**15. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**16. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (10-1-03)T

**17. SIB-R.** The Scales of Independent Behavior - Revised (SIB-R) is a standardized assessment tool evaluating functional skill levels and evaluating maladaptive behavior. The SIB-R is used by the Department or its designee to determine waiver eligibility, skill level to identify the participant's needs for the plan of service, and for determining the participant budget. (10-1-03)T

**18. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

**012. -- 099. (RESERVED).**

### **100. DETERMINATION OF PROGRAM ELIGIBILITY FOR ADULTS WITH A DEVELOPMENTAL DISABILITY.**

The Department will make the final determination of an individual's eligibility, based upon the assessments and evaluations administered by the Department or its designee. Initial and annual assessments must be performed by the Department or its designee. The purpose of the assessment is to determine a participant's eligibility for developmental disabilities services in accordance with Section 66-402(4), Idaho Code, and for ICF/MR level of care for waiver services in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 610 through 615. (10-1-03)T

**01. Initial Assessment.** For new applicants, an assessment must be completed within thirty (30) days from the date a completed application is submitted. (10-1-03)T

**02. Annual Assessments.** Assessments must also be completed for current participants at the time of their annual eligibility redetermination. The assessor must evaluate whether assessments are current and accurately describe the status of the participant. At least sixty (60) days before the expiration of the current plan of service: (10-1-03)T

**a.** The assessment process must be completed; and (10-1-03)T

**b.** The assessor must provide the results of the assessment to the participant. (10-1-03)T

**03. Determination Of Developmental Disability Eligibility.** The evaluations or assessments that are required for determining developmental disabilities for a participant's eligibility for developmental disabilities services must include a medical/social history and a functional assessment. Participants must provide the results of psychometric testing if eligibility for developmental disabilities services is based on mental retardation and they have no prior testing or prior testing is inconclusive. Documentation of diagnosis is required for participants whose eligibility is based on developmental disabilities other than mental retardation. A SIB-R will be administered by the

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Department or its designee for use in this determination. (10-1-03)T

**04. ICF/MR Level Of Care Determination For Waiver Services.** The assessor will determine ICF/MR level of care for adults in accordance with IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 610 through 615. (10-1-03)T

**101. -- 199. (RESERVED).**

**200. ASSESSMENT FOR PLAN OF SERVICE.**

The assessment for a plan of service is required for all participants prior to the development of the plan of service. This assessment must include the following: (10-1-03)T

**01. Physician's History And Physical.** The history and physical must include a physician's referral for nursing services under the DD and ISSH waivers and for developmental disabilities agencies' services, if they are anticipated to be part of the plan of service. A physician's history and physical is required within the year prior to the initiation of service and thereafter on a frequency determined by the physician. For participants in Healthy Connections: (10-1-03)T

**a.** The Healthy Connections physician may delegate to the Department the authority to approve developmental disability services. (10-1-03)T

**b.** The Healthy Connections physician must conduct the history and physical, and may refer the participant for other evaluations. (10-1-03)T

**02. Medical/Social And Developmental History.** (10-1-03)T

**03. SIB-R.** The results of the SIB-R are used to determine the level of support for the participant. The level of support score established by the SIB-R, as described in Chapter Five (5) of the SIB-R Comprehensive Manual, must be used as one (1) of the factors to establish a negotiated budget. A current SIB-R assessment must be evaluated prior to the initiation of service and must be reviewed annually to assure it continues to reflect the functional status of the participant. (10-1-03)T

**04. Participant's Medical Conditions, Risk Of Deterioration, Living Conditions, And Individual Goals.** (10-1-03)T

**05. Behavioral Or Psychiatric Needs That Require Special Consideration.** (10-1-03)T

**201. -- 209. (RESERVED).**

**210. DEVELOPING A PARTICIPANT BUDGET.**

**01. Methodology For Developing Participant Budget.** The participant budget is developed using the following methodology: (10-1-03)T

**a.** Evaluate the past three (3) years of Medicaid expenditures from the participant's profile, excluding physician, pharmacy, and institutional services; (10-1-03)T

**b.** Review all assessment information identified in Section 200 of these rules; (10-1-03)T

**c.** Identify the level of support derived from the most current SIB-R. The level of support is a combination of the individual's functional abilities and maladaptive behavior as determined by the SIB-R. Six (6) broad levels of support have been identified on a scale from zero to one hundred (0 - 100) (see Table 210.01.c.). There are six (6) levels of support, each corresponding to a support score range.

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TABLE 210.01.c. - LEVEL OF SUPPORT	
Support Score Range	Level of Support
1-24	Pervasive
25-39	Extensive
40-54	Frequent
55-69	Limited
70-84	Intermittent
85-100	Infrequent

(10-1-03)T

d. Correlate the level of support identified by the SIB-R to a budget range derived from the expenditures of individuals at the same level of support across the adult DD population. This correlation will occur annually prior to the development to the plan of service; (10-1-03)T

02. **Negotiating An Appropriate Budget.** The assessor, the participant, and the plan developer must use all the information from Subsections 210.01.a. through 210.01.d. of this rule to negotiate an appropriate budget that will support the participant's identified needs. (10-1-03)T

211. -- 299. (RESERVED).

### 300. PLAN OF SERVICE.

In collaboration with the participant, the Department or its designee must assure that the participant has one (1) plan of service. This plan of service is based on the negotiated participant budget referred to in Section 210 of these rules and must identify all services and supports. Participants may develop their own plan or designate a paid or non-paid plan developer. In developing the plan of service, the plan developer and the participant must identify services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. Authorized services must be delivered by providers who are selected by the participant. (10-1-03)T

01. **Qualifications Of A Paid Plan Developer.** Neither a provider of direct service to the participant nor the assessor may be chosen to be the paid plan developer. Family members and all others who wish to be paid for plan development must be employed as a service coordinator as defined in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. (10-1-03)T

02. **Plan Development.** The plan must be developed with the participant. With the participant's consent, the person-centered planning team may include family members, guardian, or individuals who are significant to the participant. In developing the plan of service, the plan developer and participant must identify any services and supports available outside of Medicaid-funded services that can help the participant meet desired goals. The plan of service must be submitted within thirty (30) days prior to the expiration of the existing plan of service unless delayed because of participant unavailability due to extenuating circumstances. If the plan is not submitted within this time period, authorization for provider payments may be terminated. (10-1-03)T

03. **Prior Authorization Outside Of These Rules.** The plan developer must ensure that all services that require prior authorization outside of these rules are submitted to the appropriate unit of the Department. These services include: (10-1-03)T

- a. Durable Medical Equipment (DME); (10-1-03)T
- b. Transportation; and (10-1-03)T
- c. Physical, speech and occupational therapy provided outside of a Development Disabilities Agency



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(DDA). (10-1-03)T

**04. No Duplication Of Services.** The plan developer will ensure that there is no duplication of services if there are multiple plans of service. Duplicate services will not be authorized. (10-1-03)T

**05. Plan Monitoring.** The participant, service coordinator or paid plan monitor must monitor the plan. The planning team must identify the frequency of monitoring, which must be at least every ninety (90) days. Plan monitoring must include the following: (10-1-03)T

**a.** Review the plan of service in a face-to-face contact with the participant to identify the current status of programs and changes if needed; (10-1-03)T

**b.** Contact service providers to identify barriers to service provision; (10-1-03)T

**c.** Discuss participant satisfaction regarding quality and quantity of services; and (10-1-03)T

**d.** Review provider status reviews and complete a plan monitor summary. (10-1-03)T

**06. Provider Status Reviews.** Service providers must report the participant's progress toward goals to the plan monitor on the provider status review when the plan has been in effect for six (6) months and at the annual person-centered planning meeting. The semi-annual and annual reviews must include: (10-1-03)T

**a.** The status of supports and services to identify progress; (10-1-03)T

**b.** Maintenance; or (10-1-03)T

**c.** Delay or prevention of regression. (10-1-03)T

**07. Plan Monitor Summary.** The plan monitor must complete a plan monitor summary when the plan has been in effect for six (6) months and at the annual person-centered planning process. The summary is based on the provider status review. (10-1-03)T

**301. -- 309. (RESERVED).**

### **310. CONTENT OF THE PLAN OF SERVICE.**

The plan of service must identify the type of service to be delivered, goals to be addressed within the plan year, frequency of supports and services, and identified service providers. The plan of service must include activities to promote progress, maintain functional skills, or delay or prevent regression. (10-1-03)T

**311. -- 319. (RESERVED).**

### **320. NEGOTIATION FOR THE PLAN OF SERVICE.**

The plan of service must be negotiated with the participant if the requested services fall outside the negotiated budget or do not reflect the assessed needs. When the plan of service cannot be negotiated by the assessor, the plan developer, and the participant, it will be referred by the assessor to the Department's care manager for additional evaluation. Services will not be paid for unless they are authorized on the plan of service. (10-1-03)T

**321. -- 329. (RESERVED).**

### **330. INFORMED CONSENT.**

Unless the participant has a guardian with appropriate authority, the participant must make decisions regarding the type and amount of services required. During plan development and amendment, planning team members must each indicate whether they believe the plan meets the needs of the participant, and represents the participant's choice. If not, the plan or amendment must be referred to the Bureau of Care Management's Medicaid Consumer Relations Specialist to negotiate a resolution with members of the planning team. (10-1-03)T

**01. No Guardian.** If the participant has no guardian or if the guardian is not readily available, service

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coordination must be provided to coordinate and monitor services unless the participant chooses not to receive that service. (10-1-03)T

**02. Paid Provider.** If a paid provider is the guardian, there must be a service coordinator who is not the guardian, to coordinate and monitor services. (10-1-03)T

**331. -- 339. (RESERVED).**

**340. PROVIDER IMPLEMENTATION PLAN.**

Each provider of Medicaid services, subject to prior authorization, must develop an implementation plan that identifies specific objectives that demonstrate how the provider will assist the participant to meet the participant's goals and needs identified in the plan of service. (10-1-03)T

**01. Exceptions.** An implementation plan is not required for waiver providers of: (10-1-03)T

**a.** Specialized medical equipment; (10-1-03)T

**b.** Home delivered meals; (10-1-03)T

**c.** Environmental modifications; (10-1-03)T

**d.** Non-medical transportation; (10-1-03)T

**e.** Personal emergency response systems (PERS); (10-1-03)T

**f.** Respite care; and (10-1-03)T

**g.** Chore services. (10-1-03)T

**02. Time For Completion.** The implementation plan must be completed within fourteen (14) days after the initial provision of service, and revised whenever participant needs change. (10-1-03)T

**341. -- 349. (RESERVED).**

**350. ADDENDUM TO THE PLAN OF SERVICE.**

A plan of service may be adjusted during the year with an addendum to the plan. These adjustments must be based on changes in a participant's need or demonstrated outcomes. Additional assessments or information may be clinically necessary. Adjustment of the plan of service is subject to prior authorization by the Department or its designee. (10-1-03)T

**351. -- 399. (RESERVED).**

**400. COMMUNITY CRISIS SUPPORTS.**

Community crisis supports are interventions for participants who have been determined eligible for developmental disability services and who are at risk of losing housing, employment or income, or are at risk of incarceration, physical harm, family altercation, or other emergencies. Community crisis support may be authorized the following business day after the intervention if there is a documented need for immediate intervention, no other means of support are available, and the services are appropriate to rectify the crisis. Community crisis support is limited to a maximum of twenty (20) hours during any consecutive five (5) day period. (10-1-03)T

**01. Emergency Room.** Crisis services may be provided in an emergency room during the ER evaluation process if the goal is to prevent hospitalization and return the participant to the community. (10-1-03)T

**02. Before Plan Development.** Community crisis support may be provided before or after the completion of the assessment and plan of service. If community crisis support is provided before the completion of the assessment and plan of service, the plan of service must include an identification of the factors contributing to the crisis and a strategy for addressing those factors in the future. (10-1-03)T

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401. -- 499. (RESERVED).

**500. ANNUAL REAUTHORIZATION OF SERVICES.**

A participant's plan of service must be reauthorized annually. The Department or its designee must review and authorize the new plan of service prior to the expiration of the current plan. (10-1-03)T

**01. Plan Developer Responsibilities For Annual Reauthorization.** A new plan of service must be provided to the Department or its designee by the plan developer at least thirty (30) days prior to the expiration date of the current plan. Prior to this, the plan developer must: (10-1-03)T

a. Notify the providers who appear on the plan of service of the annual review date. (10-1-03)T

b. Obtain a copy of the current annual provider status review from each provider for use by the person-centered planning team. Each provider status review must meet the requirements in Subsection 300.06 of these rules. (10-1-03)T

c. Convene the person-centered planning team to develop a new plan of service. (10-1-03)T

**02. Evaluation And Prior Authorization Of The Plan Of Service.** The plan of service must be evaluated and prior authorized in accordance with the requirements in Sections 200 through 320 of these rules. (10-1-03)T

**03. Adjustments To The Annual Budget And Services.** The annual budget and services may be adjusted based on demonstrated outcomes, progress toward goals and objectives, and benefit of services. (10-1-03)T

**04. Annual Status Reviews Requirement.** If the provider's annual status reviews are not submitted with the annual plan, services will not be authorized at the time of the annual reauthorization. These services may be added to the plan of service only by means of an addendum to the plan in accordance with Section 350 of these rules. (10-1-03)T

**05. Reapplication After A Lapse In Service.** For participants who are re-applying for service after a lapse in service, the assessor must evaluate whether assessments are current and accurately describe the status of the participant. (10-1-03)T

**06. Annual Assessment Results.** An annual assessment must be completed in accordance with Sections 100 and 200 of these rules. (10-1-03)T

501. -- 599. (RESERVED).

**600. QUALITY ASSURANCE AND IMPROVEMENT.**

**01. Quality Assurance.** Quality Assurance consists of audits and reviews to assure compliance with the Department's rules and regulations. If problems are identified during the review or audit, the provider must implement a corrective action plan within forty-five (45) days after the results are received. The Department may terminate authorization of service for providers who do not comply with the corrective action plan. (10-1-03)T

**02. Quality Improvement.** The Department may gather and utilize information from providers to evaluate customer satisfaction, participant satisfaction, outcomes monitoring, care management, quality assurance, quality improvement activities, and health and safety. These findings may lead to quality improvement activities to improve provider processes and outcomes for participants. (10-1-03)T

**03. Exception Review.** The Department will complete a clinical review of plans of service that exceed the budget authorized by the assessor or are inconsistent with the participant's assessed needs. The supporting documentation must demonstrate the medical necessity of services in the plan of service. (10-1-03)T

**04. Concurrent Review.** The Department will obtain the necessary information to determine that

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Prior Authorization for Behavioral Health Services**

**Docket No. 16-0313-0301**  
**Temporary and Proposed Rulemaking**

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participants continue to meet eligibility criteria, services continue to be clinically necessary, services continue to be the choice of the participant, and services constitute appropriate care to warrant continued authorization or need for the service. (10-1-03)T

**05. Abuse, Fraud, Or Substandard Care.** Reviewers finding suspected abuse, fraud, or substandard care must refer their findings for investigation to the Department and other regulatory or law enforcement agencies for investigation. (10-1-03)T

**601. -- 999. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.17 - SERVICE COORDINATION**

#### **DOCKET NO. 16-0317-0301 - (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 37-121 and 39-1603, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted as proposed with two revisions and a typographical correction. These additions are being made in response to public comments received during public hearings and the written comment period in accordance with Section 67-5227, Idaho Code. The rules have been revised in Subsections 202.01, 202.02, and 800.02 by adding the words "have been approved to" receive services. The heading in Section 300 is being changed for clarification as well as correcting a reference to another rule chapter.

Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the October 1, 2003 Administrative Bulletin, Volume 03-10, pages 293 through 305.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Paul Leary at (208) 364-1840.

DATED this 7th day of November, 2003.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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### **IDAPA 16, TITLE 03, CHAPTER 17**

#### **SERVICE COORDINATION**

**There are substantive changes from the proposed rule text.**

**Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.**

**The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 293 through 305.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

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*Language That Has Been Deleted From The Original Proposed Rule  
Has Been Removed And New Language Is Shown In Italics*

### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0317-0301

#### SECTION 202 (Entire Section)

##### **202. ELIGIBILITY - INDIVIDUALS WHO RECEIVE PERSONAL ASSISTANCE SERVICES.**

Individuals who receive personal assistance services are eligible for service coordination if they: ( )

**01. Personal Care Services.** Are adults or children who *have been approved to* receive state plan personal care services; or ( )

**02. Waiver Services.** Are adults who *have been approved to* receive Aged and Disabled Home and Community Based Services Waiver; and ( )

**03. Need Assistance.** Require and choose assistance to access services and supports necessary to maintain their independence in the community. ( )

#### SUBSECTION 300.01 (Partial Section)

##### **300. ASSESSMENT.**

Assessment for service coordination includes evaluation of the participant's ability to: gain access to *needed* services; coordinate or maintain *those* services; and identify the services and supports the participant needs to maintain his highest level of independence in the community. The assessment is an interactive process with maximum feasible involvement of the participant. ( )

**01. Assessment Content For Developmental Disability.** A person with a developmental disability is assessed through the developmental disability eligibility criteria identified in Section 66-402, Idaho Code. The need for assistance, as defined in Subsection 201.03 of these rules, must be determined through the person centered planning process as defined in IDAPA 16.04.11, "Rules Governing Development Disabilities Agencies," Section 011. ( )

#### SUBSECTION 800.02 (Partial Section)

##### **800. LIMITATIONS ON SERVICE COORDINATION.**

When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as service coordination services. Service coordination is limited to the following: ( )

**02. Service Coordination For Personal Assistance Services.** Up to eight (8) hours per month for participants who *have been approved to* receive personal assistance services, as prior authorized by the Department. ( )

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.17 - SERVICE COORDINATION**

#### **DOCKET NO. 16-0317-0301 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - PROPOSED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202(B), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**October 14, 2003**, from 3:00 to 5:00 p.m., in Boise, Idaho at the Region 4, Office of the Department of Health and Welfare (DHW), 1720 Westgate, Suite D, Room 119.

**October 14, 2003**, from 3:00 to 5:00 p.m. in Idaho Falls at the Region 7, Office of the DHW, 150 Shoup, 2nd Floor, Large Conference Room;

**October 17, 2003**, from 3:00 to 5:00 p.m., in Coeur d'Alene, Idaho at the Region 1, Office of the DHW, 1120 Ironwood Drive, Suite 102, Lower Level Large Conference Room.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This new chapter of rules revises several sections of current rules pertaining to "case management" now referred to as "service coordination". This rule applies to four (4) types of Medicaid participants who are eligible for service coordination currently found in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program". The four (4) types are: individuals with developmental disabilities; those authorized to receive personal assistance services; adults with severe and persistent mental illness; and children under the age of twenty-one (21). This new chapter contains all general functions and specific requirements of service coordination that are common to all four (4) participant types.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with the following groups: Case Management Association; Idaho Mental Health Association; Advocate groups for Mental Health and Developmental Disabilities; Personal Care Services agencies; Aged and Disabled (waivers) agencies and participants; Idaho Parents Unlimited; Council on Developmental Disabilities; Children's Services and participates who receive case management services from providers.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Paul Leary at (208) 364-1840.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 18th day of August, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0317-0301

**IDAPA 16**  
**TITLE 03**  
**CHAPTER 17**

#### **16.03.17 - SERVICE COORDINATION**

**000. LEGAL AUTHORITY.**

The Idaho Department of Health and Welfare has authority to promulgate rules governing the administration of public assistance programs, according to Section 56-202(b), Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 16.03.17, "Service Coordination". ( )

**02. Scope.** These rules describe service coordination for participants of the Idaho Medicaid program who are unable, or have limited ability to gain access, coordinate or maintain services on their own or through other means. Unless otherwise provided in this chapter, the requirements of IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," apply. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter. These documents are available for public inspection as described in Section 005 and Subsection 006.02 of these rules. ( )

**003. ADMINISTRATIVE APPEALS.**

All contested cases are governed by provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings". ( )

**004. INCORPORATION BY REFERENCE.**

The Department has incorporated by reference the following documents: ( )

**01. State Medicaid Manual.** Centers for Medicare and Medical Services, Publication No. 45, Part Four (4) - Services, Section 4302, "Optional Targeted Case Management Services - Basis, Scope and Purpose," (August 28, 2002). This document is available online at <http://www.cms.gov/manuals/cmstoc.asp> or requested by mail at the Centers for Medicare and Medical Services, 7500 Security Boulevard, Baltimore, Maryland 21244. ( )

**02. DSM-IV-TR.** American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83720-0036. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and



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Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at "http://www2.state.id.us/dhw/". ( )

### **006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

**01. Confidentiality Of Records.** Confidential information used or disclosed in the course of the Department's business is subject to the restrictions in state or federal law, federal regulation and Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". ( )

**02. Public Records Act.** Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. The APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. ( )

### **007. LIMITATIONS ON THE PROVISION OF DIRECT SERVICES.**

Providers of service coordination services may not provide both service coordination and direct service to the same Medicaid participant except for the following: ( )

**01. Early And Periodic Screening Diagnosis And Treatment (EPSDT).** Providers of service coordination to children under the EPSDT option; or ( )

**02. Adults With Severe And Persistent Mental Illness.** Providers of service coordination to adults with severe and persistent mental illness. ( )

**008. -- 009. (RESERVED).**

### **010. DEFINITIONS.**

**01. Agency.** An agency is a business entity that provides service coordination and includes at least a supervisor and a service coordinator. ( )

**02. Brokerage Model.** Referral or arrangement for services identified in an assessment. This model does not include the provision of direct services. ( )

**03. Crisis.** An unanticipated event, circumstance or life situation that places a participant at risk of at least one (1) of the following: ( )

**a.** Hospitalization; ( )

**b.** Loss of housing; ( )

**c.** Loss of employment or major source of income; ( )

**d.** Incarceration; or ( )

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- e. Physical harm to self or others, including family altercation or psychiatric relapse. ( )
- 04. Crisis Service Coordination.** Crisis service coordination services are linking, coordinating and advocacy services provided to assist a participant to access emergency community resources in order to resolve a crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. ( )
- 05. Current Assessment.** An assessment that accurately reflects the status of the participant. ( )
- 06. Department.** The Idaho Department of Health and Welfare or its designee. ( )
- 07. High Cost Services.** As used in Subsection 203.01 of these rules, high cost services are medical services that result in expensive claims payment or significant state general fund expenditure that may include:( )
- a. Emergency room visits or procedures; ( )
- b. Inpatient medical and psychiatric services; ( )
- c. Nursing home admission and treatment; ( )
- d. Institutional care in jail or prison; ( )
- e. State, local, or county hospital treatment for acute or chronic illness; and ( )
- f. Outpatient hospital services. ( )
- 08. Human Services Field.** A particular area of academic study in health, social services, education, behavioral science or counseling. ( )
- 09. Paraprofessional.** An adult who has a minimum of a bachelor's degree in a human services field but no experience with participants, or a person without a degree but with a high school diploma or equivalency who has at least twelve (12) months' experience with the population to whom they will be providing services. ( )
- 10. Practitioner Of The Healing Arts.** For purposes of this rule, a nurse practitioner, physician assistant or clinical nurse specialist. ( )
- 11. Service Coordination.** Service coordination is a brokerage model of case management as defined in the State Medicaid Manual. ( )
- 12. Service Coordinator.** An individual who provides service coordination to a Medicaid eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements in Section 700 of these rules. ( )
- 13. Supports.** Formal and informal services and activities that are not paid for by the Department and that enable an individual to reside safely in the setting of his choice. ( )
- 011. -- 014. (RESERVED).**
- 015. HEALTH, SAFETY AND FRAUD REPORTING.**  
Service coordinators are required to report any concerns about health and safety to the appropriate governing agency and to the Department. Service coordinators must also report fraud, including billing of services that were not provided, to the Department unit responsible for authorizing the service; and to the Surveillance and Utilization Review Unit (SUR) within the Department or its toll-free Medicaid fraud hotline. ( )
- 016. -- 099. (RESERVED).**

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Service Coordination****Docket No. 16-0317-0301**  
**Proposed Rulemaking**

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**100. PRIOR AUTHORIZATION FOR SERVICE COORDINATION SERVICES.**

All service coordination services must be prior authorized by the Department, except the following adult mental health service coordination services: initial assessment for services; five (5) hours of ongoing service coordination per month; and the first three (3) hours of crisis service coordination per month. For adults with mental illness, crisis service coordination over three (3) hours per month must be prior authorized. ( )

**101. -- 199. (RESERVED).****200. ELIGIBILITY FOR SERVICE COORDINATION SERVICES.**

Participants identified in Sections 201 through 204 of these rules, who do not receive hospice services or live in hospitals, nursing facilities, or intermediate care facilities for the mentally retarded, are eligible for service coordination. ( )

**201. ELIGIBILITY - INDIVIDUALS WITH A DEVELOPMENTAL DISABILITY.**

Individuals with a developmental disability as defined in Section 66-402, Idaho Code, are eligible for service coordination if they: ( )

**01. Age.** Are adults eighteen (18) years of age or older, or adolescents fifteen to eighteen (15-18) years of age who are authorized to receive services through the Idaho State School and Hospital (ISSH) waiver; and ( )

**02. Diagnosis.** Are diagnosed with a developmental disability, which means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and ( )

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ( )

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated; and ( )

**03. Need Assistance.** Require and choose assistance to adequately access services and supports necessary to maintain their independence in the community. ( )

**202. ELIGIBILITY - INDIVIDUALS WHO RECEIVE PERSONAL ASSISTANCE SERVICES.**

Individuals who receive personal assistance services are eligible for service coordination if they: ( )

**01. Personal Care Services.** Are adults or children who receive state plan personal care services; or ( )

**02. Waiver Services.** Are adults who receive Aged and Disabled Home and Community Based Services Waiver; and ( )

**03. Need Assistance.** Require and choose assistance to access services and supports necessary to maintain their independence in the community. ( )

**203. ELIGIBILITY - ADULTS WITH SEVERE AND PERSISTENT MENTAL ILLNESS.**

Adults with severe and persistent mental illness are eligible for service coordination if they: ( )

**01. Adults Using High Cost Services.** Are eighteen (18) years of age or older and using, or have a history of using, high cost medical services associated with periods of increased severity of mental illness; and ( )

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**02.      Diagnosis Of Mental Illness. (      )**

**a.** Are diagnosed by a licensed physician or other licensed practitioner of the healing arts with a condition of severe and persistent mental illness that is listed in the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR) within one (1) of the following classification codes: (      )

i. Schizophrenia and other psychotic disorders; (      )

ii. Delirium, dementia, and amnesic disorders; other cognitive disorders; and mental disorders due to a general medical condition; (      )

iii. Mood disorders - bipolar and depressive; (      )

iv. Schizoid, schizotypal, paranoid or borderline personality disorders; and (      )

**b.** If the only diagnosis is mental retardation or is a substance related disorder, then the person is not included in the target population for mental health service coordination. (      )

**03.      Need Assistance.** Have mental illness of sufficient severity to cause a disturbance in their role performance or coping skills in at least two (2) of the following areas, on either a continuous (more than one (1) year) or an intermittent (at least once per year) basis: (      )

**a.** Vocational or academic: Is unemployed, unable to work or attend school, is employed in a sheltered setting or supportive work situation, or has markedly limited skills and a poor work history. (      )

**b.** Financial: Requires public financial assistance for out-of-hospital maintenance and may be unable to procure such assistance without help, or the person is unable to support himself or manage his finances without assistance. (      )

**c.** Social and interpersonal: Has difficulty in establishing or maintaining a personal social support system, has become isolated, has no friends or peer group and may have lost or failed to acquire the capacity to pursue recreational or social interests. (      )

**d.** Family: Is unable to carry out usual roles and functions in a family, such as spouse, parent, or child, or faces gross familial disruption or imminent exclusion from the family. (      )

**e.** Basic living skills: Requires help in basic living skills, such as hygiene, food preparation, or other activities of daily living, or is gravely disabled and unable to meet daily living requirements. (      )

**f.** Housing: Has lost or is at risk of losing his current residence. (      )

**g.** Community: Exhibits inappropriate social behavior or otherwise causes a public disturbance due to poor judgment, bizarre, or intrusive behavior, which may result in intervention by law enforcement, the judicial system, or both. (      )

**h.** Health: Requires substantial assistance in maintaining physical health or in adhering to medically rigid prescribed treatment regimens. (      )

**204.      ELIGIBILITY - CHILDREN UP TO THE AGE OF TWENTY-ONE.**

To be eligible for service coordination under the Early and Periodic Screening Diagnosis and Treatment program (EPSDT), children must meet the following: (      )

**01.      Age.** Children from birth through the month in which their twenty first (21st) birthday occurs; and (      )

**02.      Diagnosis.** Must be identified by a physician or other practitioner of the healing arts in an EPSDT screen as having: (      )

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**a.** Developmental delay or disability: A physical or mental condition which has a high probability of resulting in developmental delay or disability, or children who meet the definition of developmental disability as defined in Section 66-402, Idaho Code; or ( )

**b.** Special health care needs: Have special health care needs requiring medical and multidisciplinary habilitation or rehabilitation services to prevent or minimize a disability; or ( )

**c.** Severe emotional disorder: Have been diagnosed with a severe emotional disorder under DSM-IV-TR, with an expected duration of at least one (1) year; and ( )

**03. Need Assistance.** Have one (1) or more of the following problems associated with their diagnosis: ( )

**a.** The condition has resulted in a level of functioning below normal age level in one (1) or more life areas such as school, family, or community; or ( )

**b.** The child is at risk of placement in a more restrictive environment or the child is returning from an out of home placement as a result of the condition; or ( )

**c.** There is danger to the health or safety of the child or the parent is unable to meet the needs of the child; or ( )

**d.** Further complications may occur as a result of the condition without provision of service coordination services; or ( )

**e.** The child requires multiple service providers and treatments. ( )

**205. -- 249. (RESERVED).**

### **250. SERVICE COORDINATION FUNCTIONS.**

Service coordination consists of the following functions: ( )

**01. Linking The Participant To Needed Services.** "Linking" includes: ( )

**a.** Finding, arranging and assisting the participant to maintain services, supports, and community resources identified on the service plan; and ( )

**b.** Advocating for the unmet needs of the participant and to encourage independence. ( )

**02. Monitoring And Coordination Of Services.** Monitoring and coordinating services includes: ( )

**a.** Assisting the participant and his family or guardian to coordinate and retain services, and assure consistency and non-duplication between services; and ( )

**b.** Assuring that services are satisfactory to the participant and making adjustments in the plan of service when needed. ( )

**251. -- 299. (RESERVED).**

### **300. ASSESSMENT.**

Assessment for service coordination services includes evaluation of the participant's ability to gain access to services, coordinate or maintain services and to identify the services, and supports the participant needs to maintain his highest level of independence in the community. The assessment is an interactive process with maximum feasible involvement of the participant. ( )

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**01. Assessment Content For Developmental Disability.** A person with a developmental disability is assessed through the developmental disability eligibility criteria identified in Section 66-402, Idaho Code. The need for assistance, as defined in Subsection 201.03 of these rules, must be determined through the person centered planning process as defined in IDAPA 16.04.11, "Rules Governing Development Disabilities Agencies," Section 003. ( )

**02. Assessment Content For Personal Assistance Services.** A comprehensive evaluation of the participant's ability to function in the community including: ( )

- a. Medical needs, physical problems and strengths; ( )
- b. Mental and emotional problems and strengths; ( )
- c. Physical living environment; ( )
- d. Vocational and educational needs; ( )
- e. Financial and social needs; ( )
- f. Evaluation of the community support system including the involvement of family or significant others; ( )
- g. Safety and risk factors; and ( )
- h. Legal status. ( )

**03. Assessment Content For Mental Health.** The assessment must focus on the following areas: ( )

- a. Mental status (psychiatric status for individuals with mental illness); ( )
- b. Medical history and needs; ( )
- c. Vocational status and needs; ( )
- d. Financial status and needs; ( )
- e. Social relationships and supports; ( )
- f. Family status and supports; ( )
- g. Basic living skills and needs; ( )
- h. Housing status and needs; and ( )
- i. Community and legal status and needs. ( )

**04. EPSDT Assessment.** The assessment for EPSDT Service Coordination services is completed by the Department or its designee. ( )

**301. -- 399. (RESERVED).**

**400. SERVICE PLAN DEVELOPMENT.**

A written service coordination plan must be developed and implemented within thirty (30) days after the participant chooses a service coordination agency. The plan must be updated at least annually. The plan must address the service coordination needs of the participant as identified in the assessment. ( )

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**DEPARTMENT OF HEALTH AND WELFARE**  
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**01. Service Plan Content For Individuals With Developmental Disabilities.** The service coordination plan for individuals with developmental disabilities is incorporated into the participant's plan of service. The content is identified in IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services," Section 310.

( )

**02. Service Plan Content For Individuals Receiving Personal Assistance Services.** The individual's service plan must contain at least the following:

( )

**a.** Problems identified during the assessment;

( )

**b.** Overall goals to be achieved;

( )

**c.** Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the service coordinator to develop the support system;

( )

**d.** Documentation of who has been involved in the service planning, including the participant's involvement;

( )

**e.** Schedules for service coordination monitoring and reassessment;

( )

**f.** Documentation of unmet needs and service gaps; and

( )

**g.** References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery.

( )

**03. Service Plan Content For Individuals With Severe And Persistent Mental Illness.** The service coordination plan must include the following:

( )

**a.** A list of problems and needs identified during the assessment;

( )

**b.** Concrete measurable goals and objectives to be achieved by the service coordinator;

( )

**c.** Time frames for achievement of the goals and objectives;

( )

**d.** Reference to any formal services arranged including specific providers;

( )

**e.** Frequency of services initiated; and

( )

**f.** Documentation of who was involved in the service planning.

( )

**04. Service Plan Development For EPSDT Service Coordination.** The initial plan for EPSDT service coordination is completed by the Department or designee. An EPSDT service coordination agency selected by the family develops an annual service coordination plan and submits it to the Department for prior authorization of continued service coordination.

( )

**401. -- 499. (RESERVED).**

### **500. SERVICE COORDINATOR CONTACT AND AVAILABILITY.**

**01. Contact With Participant.** At least every thirty (30) days, service coordinators must have contact with the participant, legal guardian or provider who can verify the participant's well being and whether services are being provided according to the written plan. The frequency, mode of contact, and person being contacted must be identified in the plan.

( )

**a.** Developmental disabilities service coordinators must have face-to-face contact with each participant at least every ninety (90) days.

( )

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**b.** Mental health service coordinators must have a face-to-face contact every month with each participant. ( )

**02. Hours Of Availability.** Service coordinators do not have to be available on a twenty-four (24) hour basis, but must include on the plan what the participant, families, and providers should do in an emergency situation. ( )

**501. -- 549. (RESERVED).**

**550. PARTICIPANT CHOICE OF SERVICE COORDINATORS AND PROVIDERS.**

Eligible participants have the option to select service coordinators. A participant must have free choice of service coordinators as well as providers of Medicaid services. ( )

**551. -- 599. (RESERVED).**

**600. CRISIS ASSISTANCE.**

**01. Crisis Assistance.** Crisis assistance, including services to prevent hospitalization or incarceration, may be provided before the completion of assessment and development of a plan of service. ( )

**02. Crisis Assistance For Children Receiving EPSDT Service Coordination.** Additional crisis hours may be authorized for service coordination for children receiving EPSDT service coordination if at least four (4) hours of service coordination have already been provided in the month. ( )

**03. Crisis Assistance For Adults With A Developmental Disability.** Crisis assistance for adults with a developmental disability may be authorized under community crisis supports as found in IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services," Section 400. ( )

**04. Crisis Assistance For Adults With Severe And Persistent Mental Illness.** Crisis assistance may be delivered prior to, or after, the completion of the assessment and individual service plan. Without authorization by the Department or its designee crisis assistance is limited to a total of three (3) hours per calendar month. The Department may authorize additional crisis case management services beyond the three (3) hour limit if a recipient still has severe or prolonged crisis case management needs that meet all of the following criteria: ( )

**a.** The service recipient is at imminent risk (within fourteen (14) days) of hospitalization or institutionalization, including jail or nursing home; and ( )

**b.** The service recipient is experiencing symptoms of psychiatric decompensation; and ( )

**c.** The service recipient has already received the maximum number of monthly hours of ongoing case management and crisis case management services; and ( )

**d.** No other crisis assistance services are available to the recipient under other Medicaid mental health option services, including Psychosocial Rehabilitation Services (PSR). ( )

**05. Crisis Assistance For Individuals Who Receive Personal Assistance Services.** Additional hours for crisis assistance may be authorized for individuals who receive personal assistance services, if at least eight (8) hours of service coordination have already been provided in the month. ( )

**601. -- 699. (RESERVED).**

**700. SERVICE COORDINATOR QUALIFICATIONS.**

**01. Provider Agreements.** Service coordinators must be employees or contractors of an agency that has a valid provider agreement with the Department. ( )

**02. Work Experience And Supervision.** All service coordinators must have at least twelve (12)



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months' experience working with the population they will be serving or be supervised by a qualified service coordinator. ( )

**03. Minimum Education Requirements.** All service coordinators must have a minimum of a bachelor's degree in a human services field from a nationally accredited university or college; or be a licensed professional nurse, also referred to as a registered nurse (RN). ( )

**04. Criminal History Check.** All service coordinators must pass the Department's criminal history check in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ( )

**701. -- 724. (RESERVED).**

#### **725. PARAPROFESSIONALS.**

Under the supervision of a qualified service coordinator, paraprofessionals may be used to assist in the implementation of a service coordination plan except for plans of participants with a mental illness. Paraprofessionals must be able to read and write at a level equal with the paperwork and forms involved in the provision of service. All paraprofessionals must pass the Department's criminal history check as described in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ( )

**726. -- 749. (RESERVED).**

#### **750. SUPERVISION OF SERVICE COORDINATION.**

Service coordination agencies must provide supervision to qualified service coordinators and paraprofessionals employed by the agency. ( )

**01. Supervisor Qualifications.** Agency supervisors must have the following qualifications: ( )

**a.** Master's degree in a human services field and one (1) year's experience with the population for whom they will be supervising services. For supervisors of service coordination for participants with mental illness, this experience must be in a mental health service setting; or ( )

**b.** Bachelor's degree in a human services field or RN degree and two (2) years' experience with the population for whom they will be supervising services. For supervisors of service coordination to participants with mental illness, this experience must be in a mental health service setting. ( )

#### **751. AGENCY CASE LOADS.**

The total caseload of a service coordinator must assure quality service delivery and client satisfaction. ( )

#### **752. DOCUMENTATION OF SERVICE COORDINATION.**

Agencies must maintain records that contain documentation describing the services provided, review of the continued need for service coordination and progress toward each service coordination goal. Documentation must be completed as required in Section 56-209(h), Idaho Code. All active records must be immediately available. Documentation must include all of the following: ( )

**01. Name.** The name of the eligible participant. ( )

**02. Provider.** The name of the provider agency and the person providing the direct services. ( )

**03. Time And Place Of Service.** The date, time and place the service was provided. ( )

**04. Documentation Of Eligibility.** A copy of the current assessment or prior authorization from the Department that documents eligibility for service coordination services, and a dated and signed service plan. ( )

**05. Description.** Agency records must contain documentation describing details of the service provided signed by the person who delivered the service. ( )

**06. Progress Review.** Review of participant's continued need for service coordination and progress

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toward each service coordination goal. A review must be completed at least every one hundred eighty (180) days after the plan development or update. ( )

**07. Satisfaction With Service.** Documentation of the participant's, family's, or guardian's satisfaction with service. ( )

**08. Informed Consent.** A copy of the informed consent form signed by the participant or guardian which documents that the participant has been informed of his rights to refuse service coordination and to choose his providers. ( )

**09. Service Plan.** A service plan that is signed by the participant or his legal representative, and the plan developer. Mental health service coordination plans must also be signed by a physician or other practitioner of the healing arts. The service coordinator must also document that a copy of the plan was given to the participant or his legal representative. The plan must be updated and authorized when required, but at least annually. ( )

**10. Crisis Assistance Documentation For Adults With Severe And Persistent Mental Illness.** Documentation to support authorization of crisis assistance beyond the monthly limitation must be submitted to the Department before such authorization may be granted. Documentation to support delivery of crisis assistance must also be maintained in the recipient's agency record and must include: ( )

**a.** A description of the crisis, including identification of unanticipated events that precipitate the need for crisis case management services; ( )

**b.** A brief review of case management and other services or supports available to, or already provided to, the participant to resolve the crisis; ( )

**c.** A crisis resolution plan; and ( )

**d.** Outcomes of crisis assistance service provision. ( )

**753. -- 799. (RESERVED).**

**800. LIMITATIONS ON SERVICE COORDINATION.**

When an assessment indicates the need for medical, psychiatric, social, educational, or other services, referral or arrangement for such services may be included as service coordination services. Service coordination is limited to the following: ( )

**01. Service Coordination For Persons With Mental Illness.** Five (5) hours per month for participants with mental illness. ( )

**02. Service Coordination For Personal Assistance Services.** Up to eight (8) hours per month for participants who receive personal assistance services, as prior authorized by the Department. ( )

**03. Other Populations.** Service coordination services to participants with developmental disabilities and children under the EPSDT option are prior authorized by the Department on a monthly basis. ( )

**04. Assessment And Plan Development.** Assessment and plan development are reimbursable except for the initial plan development for EPSDT service coordination. ( )

**05. Initial Plan Development.** Reimbursement for the initial evaluation and individual service plan development will be paid based on an hourly rate, not to exceed six (6) hours. ( )

**801. LIMITATIONS ON PAYMENT FOR SERVICE COORDINATION.**

**01. Duplication.** Participants are only eligible for one (1) type of service coordination. If they qualify for more than one (1) type, the participant must choose one (1). Service coordination payment must not duplicate payment made to public or private sector entities under other program authorities for this same purpose. ( )

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**02. Payment For Service Coordination.** Subject to the service limitations in Subsection 801.06 of this rule, only the following services are reimbursable: ( )

- a.** Face to face contact as required in Section 500 of these rules. ( )
- b.** Telephone contact between the service coordinator and the participant, participant's service providers, family members, primary care givers, legal representative, or other interested persons; or ( )
- c.** Face to face contact between the service coordinator and the participant's family members, legal representative, primary caregivers, providers, or other interested persons. ( )
- d.** Paperwork that is associated with obtaining certain needed services such as food stamps, energy assistance, emergency housing, or legal services. ( )

**03. Service Coordination During Institutionalization.** Service coordination is reimbursable on the day a participant is admitted to a medical institution if the service is provided prior to admission. Service coordination is reimbursable on the day of discharge from a medical institution if the service is provided after discharge. Service coordination may be provided during the last thirty (30) days of an inpatient stay, or if the stay is not expected to last longer than thirty (30) days, when the service does not duplicate the discharge responsibilities of the facility. ( )

**04. Incarceration.** Service coordination is not reimbursable when the recipient is incarcerated. ( )

**05. Services Delivered Prior To Assessment.** Payment for on-going service coordination will not be made prior to the completion of the assessment and service plan. ( )

**06. Payment Limitations.** Reimbursement is not allowed for missed appointments, attempted contacts, travel to provide the service, leaving messages, scheduling appointments with the Medicaid service coordinator, transporting participants, or documenting services. For service coordination paid at an hourly rate, providers will not be reimbursed for more than one (1) contact during a single fifteen (15) minute time period. ( )

**07. Healthy Connections.** If the participant is enrolled in Healthy Connections, the referral for assessment and provision of services must be authorized by a physician or other practitioner of the healing arts, except for participants who receive personal care services or aged and disabled waiver services. ( )

**08. Group Service Coordination.** Payment is not allowed for service coordination provided to a group of participants. ( )

**802. -- 999. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.20 - RULES GOVERNING ELECTRONIC PAYMENTS OF PUBLIC ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT**

**DOCKET NO. 16-0320-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the August 6, 2003, Administrative Bulletin, Volume 03-8, pages 98 and 99.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Linda Stokes at (208) 334-5734.

DATED this 30th day of September, 2003.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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### **IDAPA 16, TITLE 03, CHAPTER 20**

#### **RULES GOVERNING ELECTRONIC PAYMENTS OF PUBLIC ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 98 and 99.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

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### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.20 - RULES GOVERNING ELECTRONIC PAYMENTS OF PUBLIC ASSISTANCE, FOOD STAMPS, AND CHILD SUPPORT

DOCKET NO. 16-0320-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This rule change is proposed in order to comply with the federal Food and Nutrition Service (FNS) regulations dated July 5, 2000 and documented in 7 CFR 272 through 274.

These changes will give the Department the authority to adjust a Food Stamp account in order to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these amendments are being made to comply with changes in federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Linda Stokes at (208) 334-5734.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before August 27, 2003.

DATED this 12th day of June, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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DEPARTMENT OF HEALTH AND WELFARE  
Electronic Payments of Public Assistance

Docket No. 16-0320-0301  
Temporary and Proposed Rulemaking

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0320-0301

**131. FOOD STAMP ACCOUNT ADJUSTMENTS.**

The Department will make adjustments to a Food Stamp account to correct an auditable, out of balance settlement condition that occurs during the redemption process as a result of a system error. A system error is an error resulting from a malfunction at any point in the redemption process. The Department will provide written notice to the household regarding the adjustment. Should the household dispute the adjustment, they must request a hearing within ten (10) days of the date on the notice. If a hearing is requested, the Department must release the hold on the adjustment amount within forty-eight (48) hours of the request by the household, pending resolution of the fair hearing. (7-1-03)T

~~1342.~~ -- 139. RESERVED.

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.22 - RULES FOR LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES**

**DOCKET NO. 16-0322-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-3305, 39-3371, 39-3505 and 39-3561 Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 306 and 307.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Debby Ransom at (208) 334-6626.

DATED this 30th day of October, 2003.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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### **IDAPA 16, TITLE 03, CHAPTER 22**

#### **RULES GOVERNING LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 306 and 307.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.22 - RULES FOR LICENSED RESIDENTIAL AND ASSISTED LIVING FACILITIES**

**DOCKET NO. 16-0322-0301**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-3305, 39-3371, 39-3505, and 39-3561, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

The 2003 Legislature passed House Concurrent Resolution 17 directing the Department and the Board of Pharmacy to allow the return of unused or unopened medications to be returned to the dispensing pharmacy for credit by licensed residential care and assisted living facilities. Section 428 is being amended to reference the Board of Pharmacy rules for the return for credit of unused or unopened medication and to delete a statement that is in conflict with their rules. This section is also being amended to correct the reference to the Board of Nursing rules in Subsection 428.01.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with providers of residential care and assisted living facilities, consumers and families of residential care or assisted living services, Idaho pharmacists, the Board of Pharmacy, Office of Performance Evaluations, advocacy groups and professional associations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Debby Ransom at 334-6626.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 8th day of August, 2003.

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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0322-0301**



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### 428. MEDICATION STANDARDS AND REQUIREMENTS.

**01. Medication Policy.** Each facility shall develop and implement a written medication policy and procedure that outlines in detail the procedures to be followed regarding the delegation of medications and to include the requirements of ~~the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, "Rules of the Board of Nursing," Subsection 010.05, Section 400, Subsections 400.02, 400.04, and 400.05 where applicable.~~ The medication policy shall include, but not be limited to, the following: ~~(3-10-00)~~(\_\_\_\_)

**a.** If the resident is granted responsibility for his own medication, a written approval stating that the resident is capable of self-administration of medications, must be obtained from the resident's primary physician or authorized provider; (5-3-03)

**b.** The facility shall take the necessary precautions to protect residents from obtaining medications that are being stored either in individual resident rooms or by the facility; (3-10-00)

**c.** The facility administrator shall be responsible for providing the necessary assistance to the resident in taking his medication; (3-10-00)

**d.** Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. All PRN medication shall be documented with the reason for taking the medication. (3-10-00)

**02. Medication Distribution System.** Each facility shall use Medi-sets, or blister pack, or other system as approved by the department. The Medication System must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards. ~~A licensed nurse may fill Medi-sets which must be appropriately labeled with medication name, dosage, amount and time to be taken, and special instructions if appropriate.~~ ~~(3-10-00)~~(\_\_\_\_)

**03. Assistance With Medication.** PRN medications and temporary routine medications of fourteen (14) days or less may be maintained in an appropriately labeled multidose container. Each medication must be given to the resident directly from the medi-set or blister pack or medication container. The resident must be observed taking the medication. (3-10-00)

**04. Unused Medication.** Unused or discontinued medications shall not accumulate at the facility for longer than thirty (30) days, unless there is reason to believe that the medication will be reordered by the attending physician or authorized provider within a reasonable length of time. The unused medication may be returned to the dispensing pharmacy for credit as allowed by IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy," or shall be disposed of in a manner that assures that it cannot be retrieved. A written record of all disposal of drugs shall be maintained in the facility and shall include: ~~(5-3-03)~~(\_\_\_\_)

**a.** A description of the drug, including the amount; (3-10-00)

**b.** The resident for whom the medication was prescribed; (3-10-00)

**c.** The reason for disposal; (3-10-00)

**d.** The method of disposal; ~~and~~ ~~(3-10-00)~~(\_\_\_\_)

**e.** The date of disposal or return; and (\_\_\_\_)

**ef.** Signatures of responsible facility personnel and a witness. (3-10-00)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.03.23 - RULES GOVERNING UNIFORM ASSESSMENTS FOR STATE-FUNDED CLIENTS**

**DOCKET NO. 16-0323-0301**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is October 1, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 39-3308, 39-3508, and 56-202(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In Subsection 004.09, changes were made to clarify that the uniform assessment requirement is met by the assessment and history required in new Chapter IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the September 3, 2003, Administrative Bulletin, Volume 03-9, pages 138 and 139.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mary Wells at (208) 364-1840

DATED this 30th day of October, 2003.

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#### **IDAPA 16, TITLE 03, CHAPTER 23**

#### **RULES GOVERNING UNIFORM ASSESSMENTS FOR STATE-FUNDED CLIENTS**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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DEPARTMENT OF HEALTH AND WELFARE  
Uniform Assessments for State-Funded Clients

Docket No. 16-0323-0301 - Pending Rule  
Amendment to Temporary Rule

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There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, pages 138 and 139.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0323-0301

### *SECTION 004 (Partial Section)*

#### 004. DEFINITIONS.

09. **Uniform Assessment**~~Or Uniform Assessment Instrument (UAI)~~. A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities. For participants using the Developmental Disabilities and Idaho State School and Hospital Waiver services, and adults using Developmental Disabilities Agency services, ~~and~~ or Targeted Service Coordinator services, ~~the Uniform Assessment is the Care Management required testing or both, the requirement for a uniform assessment is met by the assessment and history required~~ under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ~~(10-1-03)T(10-1-03)T~~

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.03.23 - RULES GOVERNING UNIFORM ASSESSMENTS FOR STATE-FUNDED CLIENTS

DOCKET NO. 16-0323-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This rule change is being made to support the implementation of the Department's new prior authorization process found in new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services". The rule change identifies the standard adopted by the Department to assess individuals with a developmental disability for determination of eligibility and determination of a participant budget for authorization of services.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the this rulemaking, contact Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding the proposed rule. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

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## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0323-0301

#### 004. DEFINITIONS.

- 01. Activities Of Daily Living.** Bathing, dressing, toileting, transferring, eating, and walking. (4-5-00)
- 02. Client.** A person for whom the State of Idaho, or a program administered by the State of Idaho, pays all or any part of the cost of the person's care. (4-5-00)
- 03. Department.** The Idaho Department of Health and Welfare. (4-5-00)
- 04. Instrumental Activities Of Daily Living.** Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, and light housework. (4-5-00)
- 05. Service Plan.** A plan that describes the type and quantity of services that will be provided to a client, whether called a plan of care, plan for care, negotiated services agreement, individual support plan, or by some other name. (4-5-00)
- 06. Significant Change In Client's Condition.** A major change in the client's status that affects more than one area of the client's functional or health status, and requires review or revision of the care plan or negotiated service agreement. (4-5-00)
- 07. Supported Living Services.** Assistance with activities of daily living, instrumental activities of daily living, and supervision to enable a client to reside safely in the setting of the client's choice. (4-5-00)
- 08. Supported Living Services Provider.** A facility or person that provides supported living services. Such facilities and persons include nursing facilities, licensed residential and assisted living facilities, certified family homes, specialized family homes, personal care service providers, semi-independent facilities, intermediate care facilities for persons with mental retardation, and home and community-based services waiver providers. (4-5-00)
- 09. Uniform Assessment Or Uniform Assessment Instrument (UAI).** A set of standardized criteria adopted by the Department of Health and Welfare to assess functional and cognitive abilities. For participants using the Developmental Disabilities and Idaho State School and Hospital Waiver services, adults using Developmental Disability Agencies services, and Targeted Service Coordinator services, the Uniform Assessment is the Care Management-required testing and history under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". ~~(4-5-00)~~(10-1-03)T

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0411-0301

#### NOTICE OF RULEMAKING

#### PENDING RULE AND AMENDMENT TO TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the amendments to the temporary rule is October 1, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 39-4601 et seq. (Developmental Disabilities Services and Facilities Act), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In response to comments received from the Board of Health and Welfare, testimony presented at public hearings, and written comments submitted by the public and Department staff, the following amendments have been made to the Temporary rule:

1. Added reference to the Intensive Behavioral Intervention (IBI) Interpretive Guidelines for Developmental Disabilities Agencies (including URL) in Section 002 regarding written interpretations;
2. Revised the definition of Person-Centered Planning Process in Subsection 011.03;
3. Added a definition for Person-Centered Planning Team in Subsection 011.04;
4. Added a clarifying requirement in Subsection 301.02 that licensing agencies comply with the Department requirement to satisfactorily complete a criminal history check;
5. In Subsection 305.03, changed time period for request for hearing from fifteen (15) to thirty (30) days;
6. In Section 761, clarified the Department requirement that agencies require all job applicants to satisfactorily complete a criminal history check;
7. Throughout Section 800 added clarifications to the standards for Developmental Disabilities Agencies providing services to participants age eighteen (18) or older and ISSH waiver participants; and
8. In Section 801 added clarifications to the standards for Developmental Disabilities Agencies providing services to participants under age eighteen (18) or who do not use ISSH waiver services.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the September 3, 2003, Administrative Bulletin, Volume 03-9, pages 140 through 170.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Diane Helton at (208) 334-5512 or Mary Wells at (208) 364-1840.

DATED this 19th day of November, 2003.

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**DEPARTMENT OF HEALTH AND WELFARE**  
**Developmental Disabilities Agencies (DDA)**

**Docket No. 16-0411-0301 - Pending Rule**  
**Amendment to Temporary Rule**

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### IDAPA 16, TITLE 04, CHAPTER 11

#### RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, pages 140 through 170.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0411-0301

##### **SECTION 002 (Entire Section)**

###### **002. WRITTEN INTERPRETATIONS.**

There ~~are no~~ is a written interpretation~~s~~ for these rules specific to Intensive Behavioral Intervention (IBI). The Intensive Behavioral Intervention Interpretive Guidelines for Developmental Disabilities Agencies is available at: <http://idahocdh.org/cdh/ibi/ibi/IBIRules.asp>.

~~(10-1-03)F~~(10-1-03)T

##### **SECTION 011 (Entire Section)**

###### **011. DEFINITIONS -- P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below:

(10-1-03)T

**01. Paraprofessional.** A person such as an aide or therapy technician who is qualified to assist DDP's in providing services.

(7-1-97)

**02. Participant.** A person who receives health care services, ~~is eligible for Medicaid~~, has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA.

~~(10-1-03)F~~(10-1-03)T

**03. Person-Centered Planning Process.** A ~~planning team~~ meeting facilitated by the plan developer.

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

~~comprised~~ of family and individuals ~~who are~~ significant to the participant ~~and~~ who collaborate with the participant to develop the plan of service. ~~This team is convened and facilitated by a plan developer.~~ (10-1-03)T(10-1-03)T

**04. Person-Centered Planning Team.** The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (10-1-03)T

**045. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that covers all services and supports, based on a person-centered planning process. (10-1-03)T

**056. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T

**067. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T

**078. Physical Therapist.** A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**089. Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Sections 54-1801 et seq., Idaho Code. (7-1-97)

**0910. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules. (10-1-03)T

**101. Provider.** Any individual or organization furnishing services through the provisions of these rules. (7-1-97)

**112. Provider Agreement.** An agreement between a provider and third-party payor whereby the third-party payor agrees to pay the provider for furnishing developmental disabilities rehabilitative and habilitative services in accordance with these rules. (7-1-97)

**123. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**134. Provisional License.** A license issued to a DDA which is found not to be in substantial compliance with these rules but not to have deficiencies which jeopardize the health or safety of participants. A provisional license can be issued for a specific period of time, not to exceed one hundred eighty (180) days, while corrections are being completed. (10-1-03)T

**145. Psychologist.** A person licensed by the State of Idaho in accordance with the provisions of Sections 54-2301 et seq., Idaho Code, to independently practice psychology, or who is exempt from such requirements and meets the minimum qualifications established by the Idaho Personnel Commission to perform the duties assigned in classified service as defined by the Department, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**156. Psychology Assistant.** An individual who practices psychology under the supervision of a licensed psychologist as required by Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". (7-1-97)

**167. Rehabilitation.** The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. (7-1-97)



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**178. Rehabilitative And Habilitative Services.** Evaluation and diagnostic services which include medical, social, developmental, psychological/psychiatric services, occupational therapy, physical therapy, and speech and hearing therapy. Treatment services which include individual, group and family-centered psychotherapy; individual and group speech and hearing therapy; individual and group physical therapy; individual and group developmental therapy, and individual and group occupational therapy. Evaluation, diagnostic and treatment services are to be provided on an outpatient basis and may be community-based, home-based, or center-based as consistent with the requirements of this chapter. (7-1-97)

**189. Service.** Evaluation, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. (7-1-97)

**1920. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**201. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**242. Social Worker.** A person licensed in accordance with the Social Work Licensing Act, Sections 54-3201 et seq., Idaho Code, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**223. Speech And Language Pathologist.** A person qualified to conduct speech/language evaluation and therapy, who possesses a certificate of clinical competency in speech-language pathology or who will be eligible for certification within one (1) year of employment. Certification must be from the American Speech Language and Hearing Association (ASHA). (10-1-03)T

**234. State Developmental Disability Authority.** The Department is the State Developmental Disability Authority which has statewide responsibility for planning, coordinating and monitoring developmental disabilities services. (10-1-03)T

**245. Substantial Compliance.** Deficiencies identified at the time of the survey by the licensing agency that do not present a serious risk to participants' health or safety or seriously impede the agency's ability to provide habilitative or rehabilitative services. (10-1-03)T

**256. Supervision.** Initial direction and procedural guidance by a DDP and periodic inspection of the actual work performed at the site of service delivery. (7-1-97)

**267. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

**278. Temporary Developmental Disabilities Site Approval.** A location, established by a fully licensed agency, to provide additional services for ninety (90) or less consecutive days. (7-1-97)

**289. U.L. Underwriters Laboratories.** (7-1-97)

### **SECTION 200 (Entire Section)**

#### **200. THE ROLE OF DEVELOPMENTAL DISABILITIES AGENCIES (DDAS).**

Services must be directed toward persons identified as having a developmental disability as defined in these rules. Developmental Disabilities Agencies must provide services to eligible participants with developmental disabilities.

~~(10-1-03)T~~(10-1-03)T

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### SUBSECTION 301.02 (Partial Section)

#### 301. APPLICATION FOR LICENSURE.

**02. Conformity.** Licensed agencies must conform to all applicable rules and rules of the Department, such as Medicaid reimbursement procedures, ~~background checks, including compliance and satisfactory completion of a criminal history check in accordance~~ with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks;" ~~and fingerprinting requirements.~~ (10-1-03)T(10-1-03)T

### SUBSECTIONS 305.03 and 305.04 (Partial Section)

#### 305. ISSUANCE OF A PROVISIONAL LICENSE, DENIAL OR REVOCATION OF LICENSE.

The Department will issue a provisional license, or deny or revoke the license if, after investigation of the agency, it finds that the agency is not in substantial compliance with these rules. (7-1-97)

**03. Request For Hearing.** Within ~~fifteen~~ twenty-eight (28) days of the receipt date of the notice to issue a provisional license or action to deny or revoke the license, the applicant may request a hearing in writing, ~~a hearing with the Director and subsequently may appeal to the District Court.~~ (7-1-97)

**04. Contested Case Provisions.** Upon receipt of the written request, a hearing will be scheduled and conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ~~A review decision will be sent to the applicant within thirty (30) days of the date of the conclusion of hearing.~~ (7-1-97)(10-1-03)T

### SECTION 761 (Entire Section)

#### 761. APPLICANT SCREENING

The agency must ~~develop~~ have policies and procedures regarding job applicants, including compliance the requirement of satisfactory completion of a criminal history check in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks;" ~~which ensure that individuals hired do not have a conviction or prior employment history of abuse, neglect, mistreatment, or exploitation of a child or vulnerable adult.~~ (10-1-03)T(10-1-03)T

### SECTION 800, SUBSECTIONS 800.01, .02, .05, .05.e. and f., .06, .07, and .09 (Partial Section)

#### 800. STANDARDS FOR DEVELOPMENTAL DISABILITIES AGENCIES (DDA) PROVIDING SERVICES TO PARTICIPANTS AGE EIGHTEEN OR OLDER AND ISSH WAIVER PARTICIPANTS.

DDA services for participants eighteen (18) years of age or older and ISSH Waiver participants must be prior authorized in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". Each DDA providing services under the requirements of Section 800 must provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities eighteen (18) years of age or older or ISSH Waiver participants based on a plan of service authorized by the Department. (10-1-03)T(10-1-03)T

**01. Intake.** Prior to the delivery of any DDA services: (7-1-97)(10-1-03)T

**a.** ~~Prior to the delivery of any DDA services, the Department must find~~ The person must be determined by the Department to be eligible for DDA services; (10-1-03)T(10-1-03)T

**b.** ~~Prior to the delivery of DDA services,~~ The current medical/social history, SIB-R, and the medical care evaluation form must be obtained from the Department or its designee; and (10-1-03)T

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### DEPARTMENT OF HEALTH AND WELFARE Developmental Disabilities Agencies (DDA)

### Docket No. 16-0411-0301 - Pending Rule Amendment to Temporary Rule

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**c.** ~~All~~ services must be prior authorized by the Department or its designee under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". IBI services are authorized under Section 8~~409~~ of these rules.  
(10-1-03)F(10-1-03)T

**02. Evaluations.** ~~Comprehensive assessments which are completed by the agency~~ Evaluations required for the development of the implementation plan administered by the DDA must:  
(10-1-03)F(10-1-03)T

- a. Be conducted by qualified professionals for the respective disciplines as defined in this chapter;  
(7-1-97)
- b. Be identified as a service on the plan of service and be prior authorized by the Department or its designee.  
(10-1-03)T

**05. Implementation Plan.** The DDA must ~~be required to~~ develop an Implementation Plan for each service or support ~~which that~~ is included on the participant's plan of service provided by the agency as outlined in these rules. The Implementation Plan must be completed within fourteen (14) days ~~from the time the services were provided~~ after the initial provision of service, be revised whenever participant needs change, and must include:  
(10-1-03)F(10-1-03)T

**e.** Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, they must be individualized and revised as necessary to promote participant progress toward the stated objective.  
(10-1-03)F(10-1-03)T

**f.** Identification of the specific environment(s) where services ~~must~~ will be provided.  
(10-1-03)F(10-1-03)T

**06. Program Changes To The Implementation Plan.** (7-1-97)

**a.** The DDA must coordinate the participant's DDA program with other service providers to maximize learning.  
(10-1-03)T

**b.** Documentation of Implementation Plan changes will be included in the participant's record. This documentation must include, at a minimum, the reason for the change, documentation of coordination with other service providers; (where applicable), the date the change was made, and the signature of the person making the change complete with date and title. ~~A copy of the plan of service will suffice for compliance to this requirement.~~  
(10-1-03)F(10-1-03)T

**c.** If there are changes to an Implementation Plan that affect the service on the plan of service, an addendum to the plan of service must be completed in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".  
(10-1-03)T

**07. Program Documentation.** Each participant's record must include documentation of the participant's ~~participation~~ involvement in and response to services provided. This documentation must include at a minimum:  
(10-1-03)F(10-1-03)T

- a. Daily entry of all activities conducted toward meeting participant objectives; and (10-1-03)T
- b. Sufficient progress data to accurately assess the participant's progress toward each objective; and  
(10-1-03)T
- c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review must include the DDP's dated initials; and  
(10-1-03)T

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- d. Documentation of notification of the participant and when applicable, the participant's guardian. (10-1-03)T

**09. Provider Status Review.** DDAs must submit semiannual and annual status reviews to the plan monitor reflecting the status of behavioral objectives or services identified on the plan of service. Semiannual status reviews must remain in the participant's file and annual status reviews must be attached to annual plan of service. ~~(10-1-03)T~~(10-1-03)T

### SECTION 801 and SUBSECTIONS 801.02, .03.a., and .08 through .12, (Partial Section)

#### **801. STANDARDS FOR DDAS PROVIDING SERVICES TO PARTICIPANTS UNDER AGE EIGHTEEN WHO DO NOT USE ISSH WAIVER SERVICES.**

Each DDA providing services under the requirements of Section 801 must provide the following rehabilitative and habilitative services consistent with the needs of persons under age eighteen (18) or who do not use ISSH Waiver services with developmental disabilities. These services are to be available and accessible throughout ~~the~~ the DDA's service area. ~~(10-1-03)T~~(10-1-03)T

**02. Intake.** To ensure the health and safety of the participant, medical information ~~which~~ that accurately reflects the current status and needs of the participant must be obtained prior to the delivery of services. When this information is not available, a comprehensive medical evaluation must be completed prior to the provision of services. ~~(10-1-03)T~~(10-1-03)T

**03. Evaluations.** (7-1-97)

a. Comprehensive evaluations ~~which~~ that are completed by the agency must be conducted by qualified professionals for the respective disciplines as defined in this chapter, recommended by a physician, identify accurate, current and relevant participant strengths, needs and interests as applicable to the respective discipline, and recommend the type and amount of therapy necessary to address the participant's needs. ~~(10-1-03)T~~(10-1-03)T

**08. Physician Recommendation.** ~~There~~ It must be ~~documentation~~ documented that the plan is recommended by a physician prior to implementing the Individual Program Plan and when revisions in the plan change the type, amount, or duration of the service provided, and at the annual review. ~~(10-1-03)T~~(10-1-03)T

~~**09. Regional Notification.** DDAs are responsible to send a quarterly report to the Department or its designee for entry into a database. The report must include each participant's name, date of birth, type and amount of service, start date, and social security number.~~ ~~(10-1-03)T~~

~~**09. Implementation Plan.** The DDA must develop an Implementation Plan for each objective listed on the Individual Program Plan. The Implementation Plan must be completed within fourteen (14) days from the time the service was provided and include:~~ (10-1-03)T

- a. The participant's name; ~~and~~ ~~(10-1-03)T~~(10-1-03)T
- b. The measurable, behaviorally stated Individual Program Plan objective; ~~and~~ ~~(7-1-97)~~(10-1-03)T
- c. Baseline assessment to determine the participant's specific skills and abilities related to the specific skill to be learned; ~~and~~ ~~(10-1-03)T~~(10-1-03)T
- d. Written instructions to staff such as curriculum, lesson plans, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, they must be individualized and revised as necessary to promote participant progress towards the stated objective; ~~and~~ ~~(10-1-03)T~~(10-1-03)T

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e. Identification of the specific location where services ~~must~~ will be provided; and  
(~~10-1-03~~)T(10-1-03)

f. The target date for completion. (7-1-97)

**140. Program Documentation.** Each participant's record must include documentation of the participant's participation in and response to services provided. This documentation must include at a minimum:  
(10-1-03)T

**121. Documentation Of Program Changes.** Documentation of all changes in the Individual Program Plan or Implementation Plan must be included in the participant's record. This documentation must include at a minimum;  
(10-1-03)T

**132. Records.** Each DDA licensed under these rules must maintain accurate, current and complete participant and administrative records. Each participant record must support the individual's choices, interests and needs which result in the type and amount of each service provided. Each agency must have an integrated participant records system to provide past and current information and to safeguard participant confidentiality under these rules. Each participant record must contain the following information:  
(10-1-03)T

### SUBSECTION 804.01 (Partial Section)

#### 804. REQUIRED SERVICES.

Services provided must be sufficient in quantity and quality to meet the needs of each person receiving services, and must be provided by qualified professionals for the respective disciplines defined in this chapter. The following services, individual, group, community-based and home-based must be available as recommended by the physician and based on participant needs, interests, or choices to eligible participants either by employees of the agency or through formal written agreement and must comply with all applicable rules of this chapter:  
(10-1-03)T

**01. Psychotherapy.** Psychotherapy services when provided by a physician, psychiatrist, psychologist, psychology assistant, or social worker in accordance with the objectives specified. Psychotherapy services available must include the following:  
(10-1-03)T

a. Individual psychotherapy; and (7-1-97)

b. Group psychotherapy in which there ~~must be~~ is a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and  
(~~10-1-03~~)T(10-1-03)

c. Family-centered psychotherapy ~~which must~~ that includes the participant and at least one (1) other family member at any given time.  
(~~10-1-03~~)T(10-1-03)

### SUBSECTIONS 809.02 and 809.03 (Partial Section)

#### 809. QUALIFICATIONS TO PROVIDE INTENSIVE BEHAVIORAL INTERVENTION (IBI).

A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements:  
(5-3-03)

**02. Experience.** An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must include one thousand (1,000) hours of direct contact or care of children with developmental disabilities in a behavioral context ~~with developmental disabilities~~.  
(~~5-3-03~~)T(10-1-03)

**03. Training And Certification.** Qualified IBI professionals and paraprofessionals must complete and

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pass a Department-approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of intensive behavioral intervention and ethical standards. Specifically, the curriculum must include: assessment of individuals, behavioral management, services or treatment of individuals, supervised practical experience, and an observation of demonstrated competencies. An individual applying for IBI professional certification or to be certified as an IBI trainer must also be able to demonstrate their competency in the provision of IBI services by passing a certification examination. A certified IBI professional who has a break in the provision of IBI services of more than one (1) year will be required to meet any additional Department requirements implemented subsequent to the individual's certification. ~~(5-3-03)~~(10-1-03)T

### ***SUBSECTIONS 900.02.d. and 900.04.b. (Partial Section)***

#### **900. ADDITIONAL STANDARDS FOR PERSONNEL PROVIDING DEVELOPMENTAL DISABILITY SERVICES.**

**02. Paraprofessionals.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental disabilities services if they are under the supervision of a DDP. (7-1-97)

**d.** Paraprofessionals ~~must~~ may not conduct participant evaluations or establish the Implementation Program Plan. These activities must be conducted by a DDP; and ~~(10-1-03)F~~(10-1-03)T

**04. Administrative Staffing.** The program administrator must be accountable for all service elements of a developmental disabilities program and must be employed on a continuous regularly scheduled basis. ~~(10-1-03)T~~

**b.** If the administrator is not a DDP, a DDP must be employed on a continuous regularly scheduled basis and ~~must be~~ is responsible for the service elements of the developmental disabilities program; ~~(10-1-03)F~~(10-1-03)T

### ***SUBSECTIONS 920.03 and 920.04.e. and .04.i. (Partial Section)***

#### **920. BUILDING STANDARDS.**

The requirements under this section apply when an agency is providing center-based services. (7-1-97)

**03. Capacity.** ~~Agencies must~~ An agency may not serve ~~no~~ more than forty (40) persons with developmental disabilities on site at a given time. ~~Agencies~~ An agency may apply to the Director for a waiver under these rules. The decision of the Director may be reviewed by the Board. Agencies are encouraged to include persons without disabilities in their programs or to integrate persons with disabilities into community activities for part of the day. ~~(10-1-03)F~~(10-1-03)T

**04. Fire And Safety Standards.** (7-1-97)

**e.** Portable heating devices ~~must be~~ are prohibited except units that have heating elements that are limited to not more than two hundred twelve (212) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind ~~must be~~ is prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and ~~(10-1-03)F~~(10-1-03)T

**i.** Portable fire extinguishers must be installed throughout the facility; ~~in the~~ the numbers, types and locations ~~must be~~ are directed by the applicable fire authority noted in Subsection 920.04.a. of these rules; and ~~(10-1-03)F~~(10-1-03)T

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### *SUBSECTIONS 921.03.c. through 921.03.f. (Partial Section)*

#### 921. HEALTH.

**03. Handling Of Participant's Medications.** Personnel of the agency must not administer medications unless legally authorized to do so. Personnel may assist the participant to take his own medication under the following conditions: (10-1-03)T

**c.** ~~No-m~~ Medications ~~must~~ may not be given except under the verbal or written orders of a physician. Evidence of the written or verbal order must be maintained in the participant's record. Medisets labeled by a pharmacist and supplied to the participant on a weekly basis may serve as written evidence of a physician's order. An original prescription bottle labeled by a pharmacist describing the current physician's orders/instructions for use, may also serve as written evidence of a physician's orders. (10-1-03)F(10-1-03)T

**d.** The agency ~~must be~~ is responsible for the safeguarding of the participant's medications while he is at the agency or in the community. (10-1-03)F(10-1-03)T

**e.** Medications ~~which~~ that are no longer used by the participant must not be retained by agency staff. These must be returned to the pharmacist, the participant, or the person responsible for the participant's home care. (10-1-03)F(10-1-03)T

**f.** Medications ~~must~~ prescribed for one (1) participant may not be borrowed between shared with other participants. (10-1-03)F(10-1-03)T

### *SECTION 924 (Entire Section)*

#### 924. STATE PLAN.

Each agency ~~must be~~ is required, as needed, to participate in the state developmental disabilities plan development by completing an annual needs assessment survey or public hearing on services for Idahoans with disabilities. (10-1-03)F(10-1-03)T

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### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.04.11 - RULES GOVERNING DEVELOPMENTAL DISABILITIES AGENCIES (DDA)

DOCKET NO. 16-0411-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

These rule changes are being made to support the implementation of the Department's new prior authorization process found in a new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services".

These rule changes establish the requirement for Developmental Disabilities agencies (DDAs) to obtain prior authorization for DDA services for all adult participants. They also establish the requirement that DDAs submit provider status reviews semiannually and annually. In those portions of the text dealing with the prior authorization process, citations have been inserted to refer the reader to IDAPA 16.03.13. Other changes have been made to align terminology and content with that in IDAPA 16.03.13. The sections required by the Office of Administrative Rules were updated.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Diane Helton at (208) 334-0603 or Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.



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DEPARTMENT OF HEALTH AND WELFARE  
Developmental Disabilities Agencies

Docket No. 16-0411-0301  
Temporary and Proposed Rulemaking

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0411-0302

#### **000. LEGAL AUTHORITY.**

The following rules for the licensure of developmental disabilities agencies and the provision of services to persons with developmental disabilities in Idaho are adopted under the statutory authority vested in the Board of Health and Welfare, ~~pursuant to~~ under the Developmental Disabilities Services and Facilities Act, Sections 39-4601 et seq., Idaho Code. (7-1-97)(10-1-03)T

#### **001. TITLE, POLICY AND SCOPE.**

~~These rules govern the licensing of providers of rehabilitative and habilitative services to persons with developmental disabilities and the provision of services to eligible persons. These rules are to be cited as Idaho Department of Health and Welfare Rules, IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies".~~ (7-1-97)

**01. Title.** The title of these rules is IDAPA 16.04.11, "Rules Governing Developmental Disabilities Agencies". (10-1-03)T

~~002. Policy.~~ It is the policy of the Department of Health and Welfare to make developmental disability rehabilitative and habilitative services available through community agencies, throughout the state, as authorized or mandated by law only to the extent of funding and available resources as may be appropriated by the Idaho legislature. It is the responsibility of the Department to assure developmental disability rehabilitative and habilitative services are available to those persons diagnosed as having a developmental disability. Services ~~shall~~ must be provided in community-based settings in natural environments such as home, work, leisure or center-based settings, based on ~~consumer~~ participant needs, interests or choices. Services provided by DDA's promote independence, participation and inclusion of people with developmental disabilities in their neighborhoods and communities. (7-1-97)(10-1-03)T

**03. Scope.** These rules govern the licensing of providers of rehabilitative and habilitative services to persons with developmental disabilities and the provision of services to eligible persons. (10-1-03)T

#### **002. WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

#### **003. ADMINISTRATIVE APPEALS.**

Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (10-1-03)T

#### **004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. (10-1-03)T

#### **005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

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### DEPARTMENT OF HEALTH AND WELFARE Developmental Disabilities Agencies

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**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. (10-1-03)T

**04. Telephone.** The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "http://www2.state.id.us/dhw/". (10-1-03)T

### **006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**007. -- 009. (RESERVED).**

### **00310. DEFINITIONS -- A THROUGH O.**

For the purposes of these rules the following terms are used; as ~~herein~~ defined below: (7-1-97)(10-1-03)T

~~**01. ACCESS Unit.** Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality services and supports for individuals with developmental disabilities. (7-1-97)~~

**01. Adult.** A person who is eighteen (18) years of age or older or an ISSH Waiver participant. (10-1-03)T

**02. Annual.** Every three hundred sixty-five (365) days except during a leap year which equals three hundred sixty-six (366) days. (7-1-97)

**03. Audiologist.** A person qualified to conduct hearing evaluation and therapy, who possesses a certificate of clinical competency in audiology or who will be eligible for certification within one (1) year of employment. Certification ~~shall~~ must be from the American Speech, Language and Hearing Association (ASHA). (7-1-97)(10-1-03)T

**04. Baseline.** Current level of ability to complete a task independently, as a basis for initiating therapeutic intervention. (7-1-97)

**05. Board.** The Idaho State Board of Health and Welfare. (7-1-97)

~~**06. Bureau Of Developmental Disabilities.** The section of the Department responsible for community programs for persons with developmental disabilities and which serves as the state developmental disability authority. (7-1-97)~~

~~**07. Consumer.** A person who has been identified as having a developmental disability as defined in this chapter and who is receiving services through a DDA. (7-1-97)~~

**086. Department.** The Idaho Department of Health and Welfare. (7-1-97)

**097. Developmental Disabilities Agency (DDA).** A developmental disabilities facility designated in accordance with these rules to provide (outpatient) rehabilitative or habilitative services to children or adults with developmental disabilities. (7-1-97)

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**408. Developmental Disabilities Facility.** Any public or private organization or agency which provides developmental disabilities services on an inpatient, outpatient, residential, clinical or other programmatic basis, including community rehabilitation programs and developmental disabilities agencies. (7-1-97)

**409. Developmental Disabilities Professional (DDP).** A physician, psychologist, social worker, audiologist, speech and language pathologist specialist, developmental specialist, occupational therapist, physical therapist, or therapeutic recreation specialist employed by the developmental disabilities agency to provide evaluation and services as defined by the Department. (7-1-97)

**120. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ~~(7-1-97)~~(10-1-03)T

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-97)

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-97)

c. Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. (7-1-97)

**131. Developmental Specialist.** A person qualified to conduct developmental evaluation and therapy, including: (3-30-01)

a. A person who possesses a bachelor's or master's degree in special education, early childhood special education, speech and language pathology, applied behavioral analysis, psychology, physical therapy, occupational therapy, social work, or therapeutic recreation and who has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

b. A person who possesses a bachelor's or master's degree in an area not listed in Subsection ~~00310.131~~10.131.a. of these rules, and who: ~~(3-30-01)~~(10-1-03)T

i. Has completed a competency course jointly approved by the Department and the Idaho Association of Developmental Disabilities Agencies which relates to the job requirements of a developmental specialist; and (3-30-01)

ii. Has passed a competency examination approved by the Department; and (3-30-01)

iii. Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

c. A person who possesses a bachelor's or master's degree in an area not listed in Subsection ~~00310.131~~10.131.a. of these rules, and who: ~~(3-30-01)~~(10-1-03)T

i. Has passed a competency examination approved by the Department; and (3-30-01)

ii. Has a minimum of two hundred forty (240) hours of professionally supervised experience with individuals who have developmental disabilities; or (3-30-01)

d. A person who is exempt from the requirements of these rules: (3-30-01)

i. Any person employed as a developmental specialist prior to October 6, 1988 will be exempt from

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### DEPARTMENT OF HEALTH AND WELFARE Developmental Disabilities Agencies

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the requirements of these rules as long as there is not a gap of more than three (3) years of employment as a developmental specialist; or (3-30-01)

ii. Any person employed as a developmental specialist prior to May 30, 1997, unless previously disallowed by the Department, will be exempt from the requirements of these rules. (3-30-01)

e. Developmental Specialists providing services to infants and toddlers, birth to three (3) years of age, must have a minimum of two hundred forty (240) hours of professionally supervised experience with young children who have developmental disabilities and one (1) of the following: (3-30-01)

i. An Elementary Education Certificate or Special Education Certificate with an Endorsement in Early Childhood Special Education; or (3-30-01)

ii. A bachelor's or master's degree in special education, elementary education, speech language pathology, early childhood education, physical therapy, occupational therapy, psychology, social work, or nursing plus a minimum of twenty (20) credits in Early Childhood Special Education (ECSE) from the listing of approved courses. Courses must cover content in each of the following areas: normal child development, characteristics of young children with disabilities and foundations of special education, curriculum and instruction in ESCE, assessment in ESCE and families of young children with disabilities. Closely related electives may be accepted with recommendation from an institution of higher education. In circumstances where there is a shortage of such qualified personnel to meet service needs the Department may approve the most qualified individuals who are demonstrating satisfactory progress toward completion of applicable course work in accordance with the individuals' approved plan to meet the required standard within three (3) years of being hired. Satisfactory progress will be determined on an annual review by the Department. (3-30-01)

f. Developmental Specialists providing services to children ages three (3) through seventeen (17) must meet one (1) of the Developmental Specialists definitions listed in Subsections ~~00310.131.a.~~ through ~~00310.131.d.~~ of this rule, and also complete a competency course regarding developmental evaluation and therapy for children and pass a competency examination that includes demonstration of learned skills within one (1) year of the availability of the Department approved competency course and examination. ~~(3-30-01)~~ (10-1-03)T

g. Developmental Specialists providing services to children under the provisions of an Individualized Education Plan approved by a local school district must meet the personnel requirements established by the State Department of Education, Bureau of Special Education. Services must also be delivered in accordance with local school district and state education requirements for mandatory school attendance, and coordination of services, see Section 821 of these rules. ~~(3-30-01)~~ (10-1-03)T

**142. Director.** The Director of the Idaho Department of Health and Welfare or his designee. (7-1-97)

~~**15. Division Of Family And Community Services.** The division of the Department with responsibility for both community and institutional services for persons with developmental disabilities and mental illness. (7-1-97)~~

**163. Evaluation.** A process by which the need for services or progress toward identified goals is determined. It may include a comprehensive assessment or a specific skill assessment for the purpose of determining baseline or the need for further intervention for the discipline area being assessed. (7-1-97)

**174. Habilitation.** The process of developing skills and abilities. (7-1-97)

**185. Initial License.** A license issued to a DDA upon application when the Department determines that all application requirements have been met. An initial license can be issued for a period not to exceed one hundred eighty (180) days from the initiation of services. This license allows the Department time to evaluate the agency's ongoing capability to provide services and to meet these rules. (7-1-97)

**196. Normalization.** The process of providing services which promote a life as much as possible like that of other citizens of the community, including living in the community and access to community resources. These services are designed to enhance the social image and personal competence of those being served. (7-1-97)

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**2017. Objective.** A behavioral statement of outcome developed to address an identified need of an individual. The need is identified by the ~~consumer~~ participant and guardian where applicable, and others the ~~consumer~~ participant has chosen to participate on his planning team, to be incorporated into the ~~consumer's~~ participant's repertoire of functional behaviors. The objective is written in measurable terms which specify a target date for completion, no longer than two (2) years in duration, and criteria for successful attainment of the objective.  
(7-1-97)(10-1-03)T

**218. Occupational Therapist.** A person qualified to conduct occupational therapy evaluations and therapy, who is certified by the American Occupational Therapy Certification Board and licensed to practice in Idaho, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities.  
(7-1-97)

#### **011. DEFINITIONS -- P THROUGH Z.**

For the purposes of these rules, the following terms are used as defined below:

(10-1-03)T

**2201. Paraprofessional.** A person such as an aide or therapy technician who is qualified to assist DDP's in providing services.  
(7-1-97)

**02. Participant.** A person who receives health care services, is eligible for Medicaid, has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA.  
(10-1-03)T

**203. Person-Centered Planning Process.** ~~The means by which the consumer and those individuals selected by the consumer to be team members, identify the consumer's talents, skills, strengths, needs and desires. A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer.~~  
(7-1-97)(10-1-03)T

**04. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that covers all services and supports, based on a person-centered planning process.  
(10-1-03)T

**05. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles.  
(10-1-03)T

**06. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days.  
(10-1-03)T

**2407. Physical Therapist.** A person qualified to conduct physical therapy evaluations and therapy, who is registered to practice in Idaho, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities.  
(7-1-97)

**2508. Physician.** A person licensed to practice medicine in Idaho in accordance with the provisions of the Medical Practice Act, Sections 54-1801 et seq., Idaho Code.  
(7-1-97)

**09. Prior Authorization (PA).** A process for determining a participant's eligibility for services and medical necessity prior to the delivery or payment of services as provided by these rules.  
(10-1-03)T

**2610. Provider.** Any individual or organization furnishing services through the provisions of these rules.  
(7-1-97)

**2711. Provider Agreement.** An agreement between a provider and third-party payor whereby the third-party payor agrees to pay the provider for furnishing developmental disabilities rehabilitative and habilitative services in accordance with these rules.  
(7-1-97)

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**12. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**2813. Provisional License.** A license issued to a DDA which is found not to be in substantial compliance with these rules but not to have deficiencies which jeopardize the health or safety of ~~consumers~~ participants. A provisional license can be issued for a specific period of time, not to exceed one hundred eighty (180) days, while corrections are being completed. (7-1-97)(10-1-03)T

**2914. Psychologist.** A person licensed by the State of Idaho in accordance with the provisions of Sections 54-2301 et seq., Idaho Code, to independently practice psychology, or who is exempt from such requirements and meets the minimum qualifications established by the Idaho Personnel Commission to perform the duties assigned in classified service as defined by the Department, and has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**3015. Psychology Assistant.** An individual who practices psychology under the supervision of a licensed psychologist as required by Title 54, Chapter 23, Idaho Code, and as outlined by IDAPA 24.12.01, "Rules of the Idaho State Board of Psychologist Examiners". (7-1-97)

**316. Rehabilitation.** The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. (7-1-97)

**3217. Rehabilitative And Habilitative Services.** Evaluation and diagnostic services which include medical, social, developmental, psychological/psychiatric services, occupational therapy, physical therapy, and speech and hearing therapy. Treatment services which include individual, group and family-centered psychotherapy; individual and group speech and hearing therapy; individual and group physical therapy; individual and group developmental therapy, and individual and group occupational therapy. Evaluation, diagnostic and treatment services are to be provided on an outpatient basis and may be community-based, home-based, or center-based as consistent with the requirements of this chapter. (7-1-97)

**3318. Service.** Evaluation, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. (7-1-97)

**19. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**20. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**3421. Social Worker.** A person licensed in accordance with the Social Work Licensing Act, Sections 54-3201 et seq., Idaho Code, and who has specialized training in developmental disabilities or one (1) year of experience working with persons with developmental disabilities. (7-1-97)

**3522. Speech And Language Pathologist.** A person qualified to conduct speech/language evaluation and therapy, who possesses a certificate of clinical competency in speech-language pathology or who will be eligible for certification within one (1) year of employment. Certification ~~shall~~ must be from the American Speech Language and Hearing Association (ASHA). (7-1-97)(10-1-03)T

**3623. State Developmental Disability Authority.** ~~The Division of Family and Community Services, Bureau of Developmental Disabilities, within the Department~~ is the State Developmental Disability Authority which has statewide responsibility for planning, coordinating and monitoring developmental disabilities services. (7-1-97)(10-1-03)T

**3724. Substantial Compliance.** Deficiencies identified at the time of the survey by the licensing agency that do not present a serious risk to ~~consumers'~~ participants' health or safety or seriously impede the agency's ability

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to provide habilitative or rehabilitative services.

(~~7-1-97~~)(10-1-03)T

**3825. Supervision.** Initial direction and procedural guidance by a DDP and periodic inspection of the actual work performed at the site of service delivery. (7-1-97)

~~39. Targeted Service Coordinator.~~ A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. (7-1-97)

**26. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

~~4027.~~ **Temporary Developmental Disabilities Site Approval.** A location, established by a fully licensed agency, to provide additional services for ninety (90) or less consecutive days. (7-1-97)

~~4128.~~ **U.L. Underwriters Laboratories.** (7-1-97)

~~00412.~~ -- 099. (RESERVED).

#### **100. LICENSING OF OTHER LICENSED FACILITIES.**

Hospitals, skilled nursing facilities, intermediate care facilities for persons with mental retardation, community rehabilitation programs or other facilities or agencies licensed or certified under state law to provide medical, residential, professional or other services to persons with developmental disabilities need not be licensed under these rules unless the facility is seeking to provide rehabilitative and habilitative services to persons with developmental disabilities as described under Subsection ~~003.33~~ 011.17 of these rules. (~~7-1-97~~)(10-1-03)T

#### **101. REQUIRED LICENSING.**

All agencies providing or seeking to provide rehabilitative or habilitative services to persons with developmental disabilities described in Subsection ~~003.33~~ 011.17 of these rules ~~shall~~ must be licensed unless exempt from licensing requirements described in Section 100 of these rules. (~~7-1-97~~)(10-1-03)T

**102. -- 199. (RESERVED).**

#### **200. THE ROLE OF DEVELOPMENTAL DISABILITIES AGENCIES (DDA'S).**

Services ~~shall~~ must be directed toward persons identified as having a developmental disability as defined in these rules. Agencies ~~shall~~ must provide services to eligible ~~consumers~~ participants with developmental disabilities. (~~7-1-97~~)(10-1-03)T

**201. -- 299. (RESERVED).**

#### **300. LICENSURE OF DEVELOPMENTAL DISABILITIES AGENCIES DDA'S.**

**01. Application For Licensure.** ~~Any~~ All DDA's ~~shall~~ must apply for licensure under these rules. (~~7-1-97~~)(10-1-03)T

**02. Eligibility To Contract.** Any program not licensed under these rules is ineligible to enter into a contract with, or receive funds through, the Department for the purpose of providing rehabilitative and habilitative services to persons with developmental disabilities as outlined in Subsection ~~003.33~~ 011.17 of these rules. (~~7-1-97~~)(10-1-03)T

**03. Obligation To Contract.** Licensure of an agency by the Department does not constitute an obligation by the state to enter into a contract with that agency or otherwise provide state or federal funding or services. (7-1-97)

#### **301. APPLICATION FOR LICENSURE.**

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**01. License Required.** Before any agency, private or public, profit or nonprofit, can provide rehabilitative and habilitative services to persons with developmental disabilities under these rules, it ~~shall~~ must make application for licensure. No ~~consumer shall~~ participant may receive services through an agency until the licensing agency has approved the application for licensure. No funding for services will be paid by the Department until the agency is licensed. ~~(7-1-97)~~(10-1-03)T

**02. Conformity.** Licensed agencies ~~shall~~ must conform to all applicable rules and rules of the Department, such as Medicaid reimbursement procedures, background checks, including compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," and fingerprinting requirements. ~~(3-30-01)~~(10-1-03)T

**03. Accessible Records.** The DDA and records required under these rules ~~shall~~ must be accessible during normal operations of the agency to the licensing agency for the purpose of inspection, with or without prior notification, ~~pursuant to~~ under Sections 39-4605(4) and 39-108, Idaho Code. ~~(7-1-97)~~(10-1-03)T

**04. Open Application.** Application for new agencies will be accepted on an open and continuous basis in accordance with Subsection 301.02 of these rules. ~~(7-1-97)~~(10-1-03)T

**05. National Accreditation.** The Department may adopt the policy of accepting national accreditation in lieu of state licensure for developmental disabilities agencies. (7-1-97)

**06. Content Of Application.** Application ~~shall~~ must be made to the licensing agency of the Department on a form provided by the Department. The application and supporting documents ~~shall~~ must be received by the Department at least sixty (60) days prior to the planned opening date. The application shall include: ~~(7-1-97)~~(10-1-03)T

- a. Name, address and telephone number of the agency; and (7-1-97)
- b. Types of services to be provided by the agency and the anticipated capacity of each service; and (7-1-97)
- c. The service area of the agency; and (7-1-97)
- d. The target population to be served and the service area to be covered by the program; and (7-1-97)
- e. The anticipated date for the initiation of services; and (7-1-97)
- f. A statement indicating the need for the agency's services; and (7-1-97)
- g. A statement which identifies the ownership and describes the management structure of the agency, including a copy of the corporation's articles of incorporation with designation as nonprofit or profit, public or private, and a copy of the bylaws; and (7-1-97)
- h. A statement that the agency is in compliance with these rules and all other applicable local, state and federal requirements, including an assurance that the agency is in compliance with the provisions of Subsection 925.02 of these rules governing nondiscrimination; and ~~(7-1-97)~~(10-1-03)T
- i. A copy of the proposed organizational chart or plan for staffing of the agency; and (7-1-97)
- j. Staff qualifications including resumes, job descriptions and copies of state licenses for staff when applicable; and (7-1-97)
- k. When center-based services are to be provided, evidence of a local fire safety inspection; and (7-1-97)
- l. When center-based services are to be provided, evidence of compliance with local building and zoning codes; and (7-1-97)



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- m. When center-based services are provided, written policy and procedures regarding emergency evacuation procedures; and (7-1-97)
- n. Staff and ~~consumer~~ participant illness policy, communicable disease policy and other health and hygiene policies and procedures; and (~~7-1-97~~)(10-1-03)T
- o. Written admission and transition policy; and (7-1-97)
- p. Written ~~consumer~~ participant grievance policy; and (~~7-1-97~~)(10-1-03)T
- q. Program records system including completed examples of individual service plans, intervention techniques, and monitoring records; and (7-1-97)
- r. Fiscal record system including program billings and documentation of services provided ~~consumers~~ participants; and (~~7-1-97~~)(10-1-03)T
- s. Written description of the agency's quality assurance program; and (7-1-97)
- t. Any other information requested by the Department for determining the agency's compliance with these rules or the agency's ability to provide the services for which licensure is requested. (7-1-97)
- u. If the agency intends to seek a waiver or variance of any rule, then the application ~~shall~~ must include a written request for a waiver or variance request and ~~shall~~ must specify the particular rule and provide an explanation of the reasons for requesting the waiver or variance. (~~7-1-97~~)(10-1-03)T

**07. Agency Review.** Upon receipt of the application form and initial application materials, the licensing agency will review the materials to determine if the agency has in place systems, which if properly implemented, would result in regulatory compliance. (7-1-97)

**08. Written Decision.** A written decision with regard to licensure will be submitted to the agency by the licensing agency within thirty (30) days of the date the completed application packet is received in the licensing agency's office. (7-1-97)

### 302. ISSUANCE OF TEMPORARY LICENSE.

If an initial application for licensure is approved by the licensing agency, the agency will be issued a temporary license. Prior to the expiration of the temporary license, the licensing agency will conduct an on-site review of the agency to determine if the agency is in substantial compliance with the requirements of this chapter. A provisional license ~~shall~~ must not be issued immediately following a temporary license. (~~7-1-97~~)(10-1-03)T

### (BREAK IN CONTINUITY OF SECTIONS)

### 304. CHANGE OF PHYSICAL LOCATION.

**01. Notification Of Change.** Prior to changing physical locations, agencies providing center-based services ~~shall~~ must notify the licensing agency of the plans to relocate and the address of the new program site thirty (30) days prior to the actual move. (~~7-1-97~~)(10-1-03)T

**02. Evidence Of Review.** For the new physical location, agencies ~~shall~~ must provide evidence of review and approval by the local fire and building authorities and a statement verifying that the new location is accessible to persons with developmental disabilities. (~~7-1-97~~)(10-1-03)T

### 305. ISSUANCE OF A PROVISIONAL LICENSE, DENIAL OR REVOCATION OF LICENSE.

The Department will issue a provisional license, or deny or revoke the license if, after investigation of the agency, it

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finds that the agency is not in substantial compliance with these rules. (7-1-97)

**01. Intent To Issue Provisional License.** At the time of a survey, the applicant will be notified of the intent to issue a provisional license, or deny or revoke the license and the reasons for the intended action. (7-1-97)

**02. Applicant Notification.** Within fifteen (15) days of the site review, the applicant will be notified in writing of the Department's decision and the reason(s) for the intended action, ~~pursuant to~~ under Sections 307 and 308 of these rules. ~~(7-1-97)~~(10-1-03)T

**03. Request For Hearing.** Within fifteen (15) days of the receipt date of the notice to issue a provisional license or deny or revoke the license, the applicant may request, in writing, a hearing with the Director and subsequently may appeal to the District Court. (7-1-97)

**04. Contested Case Provisions.** Upon receipt of the written request, a hearing will be scheduled and conducted in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". A review decision will be sent to the applicant within thirty (30) days of the date of the conclusion of hearing. (7-1-97)

### 306. ISSUANCE AND TRANSFER OF LICENSE.

**01. Issuance Of License.** A notice of licensure ~~shall~~ must be issued by the Department when it determines, in accordance with the provisions of this section, that the agency requesting licensure is in substantial compliance with these rules. Agencies found to be in substantial compliance with these rules but failing to comply with every detail may be issued a license when failure to comply does not present a serious risk to the ~~consumers'~~ participants' health or safety or seriously impede the agency's ability to provide rehabilitative or habilitative services. A license issued on the basis of substantial compliance is contingent upon the correction of deficiencies in accordance with a plan developed by the agency and approved by the Department. ~~(7-1-97)~~(10-1-03)T

**02. License Return.** The license is the property of the state and ~~shall~~ must be returned to the state if it is revoked or suspended in accordance with Sections 307 and 308 of these rules. ~~(7-1-97)~~(10-1-03)T

**03. License Not Transferable.** The license is issued only to the agency named thereon and may not be transferred or assigned to any other person or entity without the written permission of the Department. (7-1-97)

**04. Availability Of License.** The license ~~shall~~ must be available. ~~(7-1-97)~~(10-1-03)T

### 307. EXPIRATION AND RENEWAL OF LICENSE.

All licenses issued under the provisions of these rules, except for those facilities exempted ~~pursuant to~~ under Section 100 of these rules, ~~shall~~ must continue for a period of no greater than two (2) years unless revoked. No later than ninety (90) days before expiration, an agency may apply for renewal of the license. Applicants for renewal will also require a site review by the licensing agency. Licensing will be reviewed no less than every two (2) years. An agency ~~shall~~ must be found to be in substantial compliance with these rules in order to receive renewal of the license. An application for renewal received less than ninety (90) days before expiration of the license ~~shall~~ must be treated as an application to be acted upon after timely applications of renewal and initial applications. ~~(7-1-97)~~(10-1-03)T

### 308. PROVISIONAL LICENSE.

If a new applicant or applicant for renewal is found not to be in substantial compliance with these rules but does not have deficiencies which jeopardize the health or safety of ~~consumers~~ participants, a provisional license may be issued by the Department for a one hundred and eighty (180) day period. At that time, the licensing agency will determine whether areas of concern have been corrected. If so, then the regular license will be issued. If not, the license will be denied or revoked. ~~(7-1-97)~~(10-1-03)T

(BREAK IN CONTINUITY OF SECTIONS)

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#### 310. EMERGENCY REVOCATION.

An agency's license may be immediately revoked when there is evidence of life-threatening danger or harm to ~~consumers~~ participants served. If, following investigation, the issue of the safety of ~~consumers~~ participants is resolved, then a license may be granted. ~~(7-1-97)~~(10-1-03)T

#### 311. VARIANCE OR WAIVER.

A variance or waiver to these rules in whole or in part may be granted if good cause is shown for such waiver; the health, welfare, or safety of ~~consumers~~ participants will not be endangered by granting such a waiver; the agency's ability to provide services will not be impeded by granting such a waiver; and precedent ~~shall~~ must not be set by the granting of such a waiver. The waiver may be renewed if sufficient written justification is presented to the licensing agency. ~~(7-1-97)~~(10-1-03)T

#### 312. -- 599. (RESERVED).

#### 600. MANAGEMENT INFORMATION SYSTEM.

All licensed DDA's seeking funding from the Department ~~shall~~ must maintain a data base on ~~consumer~~ participant services. The agencies must be capable of providing the Department with basic ~~consumer~~ participant information such as, but not limited to, the number of persons with developmental disabilities served, diagnostic category, level of mental retardation, age, ~~sex~~ gender and hours of services. This information may be hand-tabulated or part of the agency's computerized information system. ~~(7-1-97)~~(10-1-03)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 750. QUALITY ASSURANCE.

Each DDA defined under these rules ~~shall~~ must develop and implement a quality assurance program. ~~(7-1-97)~~(10-1-03)T

**01. Purpose.** The quality assurance program is an ongoing proactive internal review of the DDA designed to ensure: ~~(7-1-97)~~(10-1-03)T

**a.** Services provided to ~~consumers~~ participants are high quality and consistent with individual choices, interests, and needs and current standards of practice; and ~~(7-1-97)~~(10-1-03)T

**b.** Sufficient staff and material resources are available to meet the needs of each person served; and ~~(7-1-97)~~(10-1-03)T

**c.** The environment in which center-based services are delivered is safe and conducive to learning; and ~~(7-1-97)~~(10-1-03)T

**d.** Skill training activities are conducted in the natural setting where a person would commonly learn and utilize the skill, whenever appropriate; and ~~(7-1-97)~~(10-1-03)T

**e.** The rights of a person with disabilities are protected and each person is provided opportunities and training to make informed choices. ~~(7-1-97)~~(10-1-03)T

**02. Program Components.** The quality assurance program ~~shall~~ must be described in writing and include: ~~(7-1-97)~~(10-1-03)T

**a.** Goals and procedures by which the purpose of the quality assurance program as described in Subsection 750.01 of these rules will be achieved; and ~~(7-1-97)~~(10-1-03)T

**b.** Person, discipline or department responsible for each goal; and ~~(7-1-97)~~(10-1-03)T

**c.** A system to ensure the correction of problems identified within a specified period of time; and ~~(7-1-97)~~(10-1-03)T

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(7-1-97)

- d. A method for assessing ~~consumer~~ participant satisfaction. (~~7-1-97~~)(10-1-03)T

03. **Additional Requirements.** The quality assurance program ~~shall~~ must ensure that services provided: (~~7-1-97~~)(10-1-03)T

a. Are developed with ~~consumer~~ participant and guardian where applicable, and actively promote participation, personal choice and preference; and (~~7-1-97~~)(10-1-03)T

- b. Are age appropriate; and (7-1-97)

- c. Promote normalization; and (7-1-97)

- d. Provide opportunities for community participation and inclusion; and (7-1-97)

- e. Offer opportunities for ~~consumers~~ participants to exercise their rights; and (~~7-1-97~~)(10-1-03)T

- f. Are observable in practice. (7-1-97)

751. -- 759. (RESERVED).

760. **~~CONSUMER~~ PARTICIPANT RIGHTS.**

Each person receiving services through an agency designated under these rules ~~shall~~ must be ensured the following rights: (~~7-1-97~~)(10-1-03)T

01. **Idaho Code.** Sections 66-412 and 66-413, Idaho Code, provides the following rights. (~~7-1-97~~)(10-1-03)T

- a. Humane care and treatment; and (7-1-97)

- b. Not be put in isolation; and (7-1-97)

c. Be free of mechanical restraints, unless necessary for the safety of that person or for the safety of others; and (7-1-97)

- d. Be free of mental and physical abuse; and (7-1-97)

e. Communicate by telephone or otherwise and to have access to private area to make telephone calls and receive visitors; and (7-1-97)

- f. Receive visitors at all reasonable times and to associate freely with persons of his own choice; and (7-1-97)

- g. Voice grievances and to recommend changes in policies or services being offered; and (7-1-97)

- h. Practice his own religion; and (7-1-97)

- i. Wear his own clothing and to retain and use personal possessions; and (7-1-97)

j. Be informed of his medical and habilitative condition, of services available at the agency and the charges for the services; and (7-1-97)

- k. Reasonable access to all records concerning himself; and (7-1-97)

- l. Refuse services; and (7-1-97)

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- m. Exercise all civil rights, unless limited by prior court order. (7-1-97)
02. **Additional ~~Consumer~~ Participant Rights.** The agency ~~shall~~ must also ensure the following rights. (7-1-97)(10-1-03)T  
The right to:
- a. Privacy and confidentiality; and (7-1-97)
- b. Be treated in a courteous manner; and (7-1-97)
- c. Receive a response from the agency to any request made within a reasonable time frame; and (7-1-97)
- d. Receive services which enhance the ~~consumer's~~ participant's social image and personal competencies and, whenever possible, promote inclusion in the community; and (7-1-97)(10-1-03)T
- e. Refuse to perform services for the agency. If the ~~consumer~~ participant is hired to perform services for the agency the wage paid ~~shall~~ must be consistent with state and federal law; and (7-1-97)(10-1-03)T
- f. Review the results of the most recent survey conducted by the Department and the accompanying plan of correction; and (7-1-97)
- g. All other rights established by law; and (7-1-97)
- h. Be protected from harm. (7-1-97)
03. **Method Of Informing ~~Consumers~~ Participants Of Their Rights.** Each agency ~~shall~~ must ensure that each person receiving services is informed of his rights in the following manner: (7-1-97)(10-1-03)T
- a. Upon initiation of services, each ~~consumer~~ participant and guardian, where applicable, ~~shall~~ must be provided with a packet of information which outlines rights, access to grievance procedures, and the names, addresses, and telephone numbers of protection and advocacy services. This packet ~~shall~~ must be written in easily understood terms. (7-1-97)(10-1-03)T
- b. When providing center-based services, agencies ~~shall~~ must prominently post a list of the rights contained in this chapter. (7-1-97)(10-1-03)T
- c. Each ~~consumer~~ participant and guardian, where applicable, ~~shall~~ must be provided with a verbal explanation of their rights in a manner that will best promote individual understanding of these rights. (7-1-97)(10-1-03)T
- 761. APPLICANT SCREENING**  
The agency ~~shall~~ must develop policies and procedures, including compliance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," which ensure that individuals hired do not have a conviction or prior employment history of abuse, neglect, mistreatment, or exploitation of a child or vulnerable adult. (3-30-01)(10-1-03)T
- 762. OBLIGATION TO REPORT.**  
All confirmed or suspected incidents of mistreatment, neglect, exploitation or abuse of ~~consumers~~ participants must be reported to the adult or child protection authority. (7-1-97)(10-1-03)T
- 763. DEVELOPMENT OF POSITIVE SOCIAL BEHAVIORS.**  
Each DDA ~~shall~~ must develop and implement written policies and procedures that address the development of positive social behaviors and the management of inappropriate behavior. These policies and procedures ~~shall~~ must include: (7-1-97)(10-1-03)T
01. **Positive Social Skills.** Focusing on increasing positive social skills. (7-1-97)

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**02. Positive Approaches/Least Restrictive Alternatives.** Ensuring and documenting the use of positive approaches and least restrictive alternatives. (7-1-97)

**03. Protected Rights.** Ensuring that the safety, welfare and human and civil rights of ~~consumers~~ participants are adequately protected. (7-1-97)(10-1-03)T

**04. Underlying Causes.** Addressing the evaluation or assessment of the possible underlying causes of the inappropriate behavior and what the ~~consumer~~ participant may be attempting to communicate by the behavior. (7-1-97)(10-1-03)T

**05. Objectives And Plans.** Ensuring that objectives and intervention techniques are developed or obtained and implemented to address self-injurious behavior, aggressive behavior, inappropriate sexual behavior and any other behaviors which significantly interfere with the ~~consumer's~~ participant's independence or ability to participate in the community. (7-1-97)(10-1-03)T

**06. Training Alternate Behavior.** Ensuring that programs to manage inappropriate ~~consumer~~ participant behavior include training of the appropriate alternative behavior(s). (7-1-97)(10-1-03)T

**07. ~~Consumer~~ Participant Involvement.** For plans developed by the agency ensuring the ~~consumer~~ participant is involved, whenever possible, in developing the plan to manage inappropriate behavior. When plans used by the agency are developed by another service provider the agency ~~shall~~ must not be held accountable for ensuring ~~consumer~~ participant involvement in the development of the plan. (7-1-97)(10-1-03)T

**08. Written Informed Consent.** Ensuring that programs developed by the agency to manage inappropriate ~~consumer~~ participant behavior are conducted only with the written informed consent of the ~~consumer~~ participant and guardian where applicable. When programs used by the agency are developed by another service provider the agency ~~shall~~ must obtain a copy of the informed consent. (7-1-97)(10-1-03)T

**09. Review And Approval.** Ensuring that programs developed by the agency to manage inappropriate behavior are only implemented after the review and written approval of a DDP. If the program contains restrictive or aversive components, the agency psychologist will also review and approve, in writing, the plan prior to implementation. When programs implemented at the agency are developed by another service provider the agency ~~shall~~ must obtain a copy of these reviews and approvals. (7-1-97)(10-1-03)T

**10. Appropriate Use Of Interventions.** Ensuring that interventions used to manage inappropriate ~~consumer~~ participant behavior are never used: (7-1-97)(10-1-03)T

- a. For disciplinary purposes; or (7-1-97)
- b. For the convenience of staff; or (7-1-97)
- c. As a substitute for a needed training program; or (7-1-97)
- d. By untrained or unqualified staff. (7-1-97)

764. -- 799. (RESERVED).

### 800. STANDARDS FOR ~~DDA'S~~ DEVELOPMENTAL DISABILITIES AGENCIES (DDA) PROVIDING SERVICES TO ~~CONSUMERS WITH AUTHORIZED INDIVIDUAL SUPPORT PLANS~~ PARTICIPANTS AGE EIGHTEEN OR OLDER AND ISSH WAIVER PARTICIPANTS.

DDA services for participants eighteen (18) years of age or older and ISSH Waiver participants must be prior authorized in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". Each DDA ~~shall~~ must provide the following rehabilitative and habilitative services consistent with the needs of persons with developmental disabilities ~~who have developed an Individual Support Plan with a Targeted Service Coordinator through a person centered planning process~~ eighteen (18) years of age or older or ISSH Waiver participants based on a plan of service authorized by the Department. (7-1-97)(10-1-03)T

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**01. Intake.** (7-1-97)

~~a. To ensure the health and safety of the consumer, a medical profile sheet which contains relevant medical and identifying information about the consumer and family, and accurately reflects the current status and needs of the consumer shall be obtained or completed prior to the delivery of services. Prior to the delivery of any DDA services, the Department must find the person eligible for DDA services.~~ (7-1-97)(10-1-03)T

~~b. Prior to the delivery of DDA services, current and accurate comprehensive evaluations or specific skill assessments shall be completed or obtained, as necessary, to effectively plan the consumer's program. To be considered current, evaluations and assessments shall accurately reflect the current status of the consumer all services must be prior authorized by the Department or its designee under IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services". IBI services are authorized under Section 810 of these rules.~~ (7-1-97)(10-1-03)T

**02. Evaluations.** (7-1-97)

~~a.~~ Comprehensive assessments which are completed by the agency ~~shall~~ must: (7-1-97)(10-1-03)T

~~b.a.~~ Be conducted by qualified professionals for the respective disciplines as defined in this chapter; (7-1-97)

~~e.b.~~ Be identified as a service on the ~~Individual Support P~~plan of service and be prior authorized by the Department or its designee. (7-1-97)(10-1-03)T

**03. Specific Skill Assessments.** Specific skill assessments which are completed by the agency ~~shall~~ must: (7-1-97)(10-1-03)T

~~a.~~ Be completed by qualified professionals for the respective disciplines as defined in this chapter; and (7-1-97)

~~b.~~ Be identified as a service or need on the ~~Individual Support P~~plan of service; and (7-1-97)(10-1-03)T

~~c.~~ Be conducted for the purposes of determining baselines, or the need for further interventions. (7-1-97)

**04. ~~Individual Support Plan Of Service.~~** Any services provided by the DDA must be included on the plan and authorized by the ~~Regional ACCESS Unit~~ Department or its designee before a ~~consumer participant~~ can receive the service from the agency. (7-1-97)(10-1-03)T

~~05. **Transition Plan.** Each Targeted Service Coordinator shall annually review Individual Support Plans for progress/outcomes and facilitate transition to more independent activities.~~ (3-30-01)

**065. Implementation Plan.** The DDA ~~shall~~ must be required to develop an Implementation Plan for each service or support which is included on the ~~consumer's Individual Support participant's P~~plan of service provided by the agency as outlined in these rules. The Implementation Plan ~~shall~~ must be completed within fourteen (14) days from the time the services were provided and include: (7-1-97)(10-1-03)T

~~a.~~ The ~~consumer's participant's~~ name; and (7-1-97)(10-1-03)T

~~b.~~ The specific skill area; and (7-1-97)

~~c.~~ A baseline statement addressing the ~~consumer's participant's~~ specific skills and abilities related to the specific skill to be learned; and (7-1-97)(10-1-03)T

~~d.~~ Measurable, behaviorally stated objectives which are developed from an identified service or support in the ~~Individual Support P~~plan of service; and (7-1-97)(10-1-03)T

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e. Written instructions to staff such as curriculum, lesson plans, locations, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, shall must be individualized and revised as necessary to promote consumer participant progress toward the stated objective. (7-1-97)(10-1-03)T

f. Identification of the specific environment(s) where services shall must be provided. (7-1-97)(10-1-03)T

~~g. These implementation plans shall be initiated within fourteen (14) calendar days of the initiation of services.~~ (7-1-97)

~~h.g.~~ The target date for completion. (7-1-97)

~~07. ACCESS Unit Authorization. ACCESS Unit prior authorization is required in the following circumstances:~~ (7-1-97)

~~a. When revisions in the Implementation Plan change the type and amount of services listed on the Individual Support Plan; and~~ (7-1-97)

~~b. At the consumer's annual review of DDA services as part of the annual update of the Individual Support Plan.~~ (7-1-97)

**086. Program Documentation.** Each consumer's participant's record shall must include documentation of the consumer's participant's participation in and response to services provided. This documentation shall must include at a minimum: (7-1-97)(10-1-03)T

a. Daily entry of all activities conducted toward meeting consumer participant objectives; and (7-1-97)(10-1-03)T

b. Sufficient progress data to accurately assess the consumer's participant's progress toward each objective; and (7-1-97)(10-1-03)T

c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review shall must include the DDP's dated initials; and (7-1-97)(10-1-03)T

d. Documentation of notification of the consumer participant and when applicable, the consumer's participant's guardian. (7-1-97)(10-1-03)T

**097. Program Changes.** (7-1-97)

a. The DDA shall must coordinate the consumer's participant's DDA program with other service providers to maximize learning. (7-1-97)(10-1-03)T

b. ~~Documentation of Implementation Plan Changes:~~ Documentation of Implementation Plan changes will be included in the consumer's participant's record. This documentation shall must include at a minimum, the reason for the change, documentation of coordination with other service providers, where applicable, the date the change was made and the signature of the person making the change complete with date and title. A copy of ~~an ISP~~ the plan of service will suffice for compliance to this requirement. (7-1-97)(10-1-03)T

**108. Records.** Each DDA licensed under these rules shall must maintain accurate, current and complete consumer participant and administrative records. Each participant record ~~of consumers with Targeted Service Coordinators shall must~~ contain the following information: (7-1-97)(10-1-03)T

a. Documentation which verifies that the services provided are ~~recommended by a physician authorized by the Department or its designee.~~ A copy of ~~an Individual Support Plan of service~~ will suffice for compliance to this requirement; and (7-1-97)(10-1-03)T



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b. When evaluations are completed or obtained by the agency the ~~consumer's~~ participant's record ~~shall~~ must include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and  
(7-1-97)(10-1-03)T

c. A copy of the ~~Individual Support Pplan~~ plan of service authorized by the ~~ACCESS Unit~~ Department or its designee; and  
(7-1-97)(10-1-03)T

d. ~~Implementation Plans~~. Program documentation and monitoring records which comply with all applicable sections of these rules; and  
(7-1-97)(10-1-03)T

e. The case record ~~shall~~ must be divided into program/discipline areas identified by tabs, such as, ~~Individual Support Pplan~~ plan of service, medical, social, psychological, speech, and developmental. (7-1-97)(10-1-03)T

**09. Provider Status Review.** DDAs must submit semiannual and annual status reviews to the plan monitor reflecting the status of behavioral objectives or services identified on the plan of service. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service.  
(10-1-03)T

### 801. STANDARDS FOR DDA'S PROVIDING SERVICES TO ~~CONSUMERS WITHOUT TARGETED SERVICE COORDINATORS~~ PARTICIPANTS UNDER AGE EIGHTEEN WHO DO NOT USE ISSH WAIVER SERVICES.

Each DDA ~~shall~~ must provide the following rehabilitative and habilitative services consistent with the needs of persons under age eighteen (18) or who do not use ISSH Waiver services with developmental disabilities ~~who have chosen not to access a Targeted Service Coordinator~~, to be available and accessible throughout its service area.  
(7-1-97)(10-1-03)T

**01. Eligibility Documentation.** Prior to the delivery of services, current and accurate comprehensive evaluations or specific skills assessments ~~shall~~ must be completed or obtained, as necessary to determine eligibility as defined in Section 66-402, Idaho Code, and the Department's current interpretive guidelines, and to effectively plan the ~~consumer's~~ participant's program.  
(7-1-97)(10-1-03)T

**02. Intake.** To ensure the health and safety of the ~~consumer~~ participant, medical information which accurately reflects the current status and needs of the ~~consumer~~ ~~shall~~ participant must be obtained prior to the delivery of services. When this information is not available, a comprehensive medical evaluation ~~shall~~ must be completed prior to the provision of services.  
(7-1-97)(10-1-03)T

### **03. Evaluations.** (7-1-97)

a. Comprehensive evaluations which are completed by the agency ~~shall~~ must be conducted by qualified professionals for the respective disciplines as defined in this chapter, recommended by a physician, identify accurate, current and relevant ~~consumer~~ participant strengths, needs and interests as applicable to the respective discipline, and recommend the type and amount of therapy necessary to address the ~~consumer's~~ participant's needs.  
(7-1-97)(10-1-03)T

b. Prior to the delivery of ongoing services in a specific discipline a comprehensive medical, medical/social assessment ~~shall~~ must be completed or obtained.  
(7-1-97)(10-1-03)T

c. Evaluation or specific skill assessments from additional disciplines such as speech and language pathologists or physical therapists, ~~shall~~ must also be completed or obtained as necessary to meet the ~~consumer's~~ participant's needs.  
(7-1-97)(10-1-03)T

d. All evaluations ~~shall~~ must be completed within forty-five (45) calendar days of the date recommended by the physician. If not completed within this time frame, the ~~consumer's~~ participant's records must contain ~~consumer~~ participant-based documentation justifying the delay.  
(7-1-97)(10-1-03)T

e. A current psychological or psychiatric evaluation ~~shall~~ must be completed or obtained when the ~~consumer~~ participant is receiving a behavior modifying drug(s), or prior to the initiation of restrictive interventions to

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modify inappropriate behavior(s), or an evaluation is necessary to determine eligibility for services or establish a diagnosis, or the consumer participant has a primary or secondary diagnosis of mental illness, or when otherwise required in this chapter. (7-1-97)(10-1-03)T

f. Comprehensive evaluations and specific skill assessments completed or obtained by the DDA ~~shall~~ must be current. To be considered current, evaluations and assessments ~~shall~~ must accurately reflect the current status of the consumer participant. (7-1-97)(10-1-03)T

**04. Individual Program Plan.** ~~When a consumer has not developed an Individual Support Plan with a Targeted Service Coordinator through a person-centered planning process, the~~ DDA is required to complete an Individual Program Plan ~~and the following shall apply~~ according to the following: (7-1-97)(10-1-03)T

a. The Individual Program Plan ~~shall~~ must be developed following obtainment or completion of all applicable evaluations consistent with the requirements of this chapter. (7-1-97)(10-1-03)T

b. The planning process ~~shall~~ must include the consumer participant and guardian, if applicable, and others the individual chooses to have in attendance. The consumer participant and guardian where applicable, will be provided a copy of the completed individual program plan. If the consumer participant and guardian where applicable, is unable to participate, the reason ~~shall~~ must be documented in the consumer's participant's record. (7-1-97)(10-1-03)T

**05. Program Plan Components.** The Individual Program Plan ~~shall~~ must promote self-sufficiency, the consumer's participant's choice in program objectives and activities and encourage the consumer's participant's participation and inclusion in the community. The Individual Program Plan ~~shall~~ must include: (7-1-97)(10-1-03)T

a. The consumer's participant's name and medical diagnosis; and (7-1-97)(10-1-03)T

b. The name of the DDP, the date of the planning meeting, and the name and titles of those present at the meeting; and (7-1-97)

c. Documentation that the plan is recommended by a physician; and (7-1-97)

d. The type, amount and duration of therapy to be provided such as individual speech therapy, thirty (30) minutes two (2) times per week; group developmental therapy, two and one-half (2 1/2) hours, five (5) days per week; and (7-1-97)

e. A list of the consumer's participant's current personal goals, interests and choices; and (7-1-97)(10-1-03)T

f. An accurate, current and relevant list of the consumer's participant's specific developmental and behavioral strengths; and (7-1-97)(10-1-03)T

g. An accurate, current and relevant list of the consumer's participant's specific developmental and behavioral needs. This list will identify which needs are a priority based on the consumer's participant's choices and preferences. An Individual Program Plan objective ~~shall~~ must be developed for each priority need; and (7-1-97)(10-1-03)T

h. A list of the measurable, behaviorally stated objectives, which correspond to the list of priority needs. An Implementation Plan ~~shall~~ must be developed for each objective; and (7-1-97)(10-1-03)T

i. The discipline or DDP responsible for each objective; and (7-1-97)

j. The target date for completion; and (7-1-97)

k. The review date; and (7-1-97)

l. An individual transition plan designed to facilitate independence, personal goals and interests. The

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transition plan may include vocational goals/objectives directed toward paid employment. The transition plan ~~shall~~ must specify criteria for transition into alternative settings, vocational training, supported or independent employment, volunteer opportunities, community based organizations and activities, or less restrictive settings. The implementation of some components of the plan may necessitate decreased hours of service or discontinuation of services from a DDA. ~~(7-1-97)(10-1-03)T~~

**06. Support Documentation.** The Individual Program Plan ~~shall~~ must be supported by documentation included in the ~~consumer's~~ participant's record. ~~(7-1-97)(10-1-03)T~~

**07. Frequency Of Plan Development.** Members of the planning team ~~shall~~ must meet at least annually, or more often if necessary, to review and update the plan to reflect any changes in the needs or status of the ~~consumer~~ participant. ~~(7-1-97)(10-1-03)T~~

**08. Physician Recommendation.** There ~~shall~~ must be documentation that the plan is recommended by a physician prior to implementing the Individual Program Plan and when revisions in the plan change the type, amount, or duration of the service provided, and at the annual review. ~~(7-1-97)(10-1-03)T~~

**09. Regional Notification.** DDAs are responsible to send a quarterly report to the ~~Regional ACCESS Units Department or its designee~~ for entry into a database. The report ~~shall~~ must include each participant's name, date of birth, type and amount of service, start date, and social security number. ~~(3-30-01)(10-1-03)T~~

**10. Implementation Plan.** The DDA ~~shall be required to~~ must develop an Implementation Plan for each objective listed on the Individual Program Plan. The implementation Plan ~~shall~~ must be completed within fourteen (14) days from the time the service was provided and include: ~~(7-1-97)(10-1-03)T~~

- a. The ~~consumer's~~ participant's name; and ~~(7-1-97)(10-1-03)T~~
- b. The measurable, behaviorally stated Individual Program Plan objective; and (7-1-97)
- c. Baseline assessment to determine the ~~consumer's~~ participant's specific skills and abilities related to the specific skill to be learned; and ~~(7-1-97)(10-1-03)T~~
- d. Written instructions to staff such as curriculum, lesson plans, activity schedules, type and frequency of reinforcement and data collection, directed at the achievement of each objective. These instructions may be standardized, however, ~~shall~~ must be individualized and revised as necessary to promote ~~consumer~~ participant progress towards the stated objective; and ~~(7-1-97)(10-1-03)T~~
- e. Identification of the specific location where services ~~shall~~ must be provided; and ~~(7-1-97)(10-1-03)T~~
- ~~f. These implementation plans shall be completed within fourteen (14) calendar days of the initiation of services; and (7-1-97)~~
- ~~g.~~ The target date for completion. (7-1-97)

**11. Program Documentation.** Each ~~consumer's~~ participant's record ~~shall~~ must include documentation of the ~~consumer's~~ participant's participation in and response to services provided. This documentation ~~shall~~ must include at a minimum: ~~(7-1-97)(10-1-03)T~~

- a. Daily entry of all activities conducted toward meeting ~~consumer~~ participant objectives; and ~~(7-1-97)(10-1-03)T~~
- b. Sufficient progress data to accurately assess the ~~consumer's~~ participant's progress toward each objective; and ~~(7-1-97)(10-1-03)T~~
- c. A review of the data and, when indicated, changes in the daily activities or specific implementation procedures by a DDP. The review ~~shall~~ must include the DDP's dated initials. ~~(7-1-97)(10-1-03)T~~

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**12. Documentation Of Program Changes.** Documentation of all changes in the Individual Program Plan or Implementation Plan ~~shall~~ must be included in the ~~consumer's~~ participant's record. This documentation ~~shall~~ must include at a minimum; ~~(7-1-97)(10-1-03)T~~

- a. The reason for the change; and ~~(7-1-97)~~
- b. The date the change was made; and ~~(7-1-97)~~
- c. Signature of the person making the change complete with date and title; and ~~(7-1-97)~~
- d. Documentation of notification of the ~~consumer~~ participant and, when applicable, the ~~consumer's~~ participant's guardian. ~~(7-1-97)(10-1-03)T~~

**13. Records.** Each DDA licensed under these rules ~~shall~~ must maintain accurate, current and complete ~~consumer participant~~ and administrative records. Each ~~consumer participant~~ record ~~shall~~ must support the individual's choices, interests and needs which result in the type and amount of each service provided. Each agency ~~shall~~ must have an integrated ~~consumer participant~~ records system to provide past and current information and to safeguard ~~consumer participant~~ confidentiality ~~pursuant to~~ under these rules. Each ~~participant~~ record ~~of consumers without a Targeted Service Coordinator shall~~ must contain the following information: ~~(7-1-97)(10-1-03)T~~

- a. Profile sheet containing necessary identifying information about the ~~consumer participant~~ and family; and ~~(7-1-97)(10-1-03)T~~
- b. Medical/social history containing relevant medical and social history and information on the ~~consumer participant~~ and family; and ~~(7-1-97)(10-1-03)T~~
- c. Documentation which verifies that the services provided are recommended by a physician; and ~~(7-1-97)~~
- d. When evaluations are completed or obtained by the agency the ~~consumer's participant's~~ record ~~shall~~ must include the evaluation forms and narrative reports, signed and dated by the respective evaluators; and ~~(7-1-97)(10-1-03)T~~
- e. Individual Program Plan, when developed by the agency; and ~~(7-1-97)~~
- f. Implementation Plans, program documentation and monitoring records which comply with all applicable sections of these rules; and ~~(7-1-97)~~
- g. The case records ~~shall~~ must be divided into program/discipline areas identified by tabs, such as, Individual Program Plan, medical, social, psychological, speech, and developmental. ~~(7-1-97)(10-1-03)T~~

### 802. FUNDS.

Agencies which receive funds under these rules ~~shall~~ must maintain accurate records of the receipt, obligation and disbursement of funds. Reimbursement for services is contingent upon documentation in ~~consumer participant~~ records which supports the need for the type and amount of each service. ~~(7-1-97)(10-1-03)T~~

### 803. ACCESSIBILITY.

Records ~~shall~~ must be accessible during normal operation of the agency to the Department for the purpose of inspection, with or without prior notification, ~~pursuant to~~ under Section 39-108, Idaho Code. ~~(7-1-97)(10-1-03)T~~

### 804. REQUIRED SERVICES.

Services provided ~~shall~~ must be sufficient in quantity and quality to meet the needs of each person receiving services, and ~~shall~~ must be provided by qualified professionals for the respective disciplines defined in this chapter. The following services, individual, group, community-based and home-based ~~shall~~ must be available as recommended by the physician and based on ~~consumer participant~~ needs, interests, or choices to eligible ~~consumers participants~~ either by employees of the agency or through formal written agreement and ~~shall~~ must comply with all applicable rules of

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this chapter:

~~(7-1-97)~~(10-1-03)T

**01. Psychotherapy.** Psychotherapy services when provided by a physician, psychiatrist, psychologist, psychology assistant, or social worker in accordance with the objectives specified. Psychotherapy services available ~~shall~~ must include the following:

~~(7-1-97)~~(10-1-03)T

a. Individual psychotherapy; and

(7-1-97)

b. Group psychotherapy in which there ~~shall~~ must be a minimum ratio of one (1) qualified staff person for every twelve (12) individuals in group therapy; and

~~(7-1-97)~~(10-1-03)T

c. Family-centered psychotherapy which ~~shall~~ must include the ~~consumer~~ participant and one (1) other family member at any given time.

~~(7-1-97)~~(10-1-03)T

**02. Speech And Hearing Therapy.** Speech and hearing therapy services provided in accordance with the specified objectives.

(7-1-97)

**03. Physical Therapy.** Physical therapy services provided by a licensed physical therapist in accordance with the specified objectives.

(7-1-97)

**04. Developmental Therapy.** Developmental therapy services:

(7-1-97)

a. ~~Shall~~ Must be provided by qualified developmental disabilities staff in accordance with objectives specified; and

~~(7-1-97)~~(10-1-03)T

b. Therapy ~~shall~~ must be directed toward the rehabilitation/habilitation of physical or mental disabilities in the areas of self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living or economic self-sufficiency.

~~(7-1-97)~~(10-1-03)T

**05. Occupational Therapy.** Occupational therapy services provided by a licensed occupational therapist in accordance with the specified objectives.

(7-1-97)

### 805. OPTIONAL SERVICES.

Optional services include medication consultation, psychiatric advices, and Intensive Behavioral ~~Intervention~~ (IBI).

~~(4-5-00)~~(10-1-03)T

### 806. MEDICATION CONSULTATION.

Consultation for the purpose of prescribing, monitoring, or administering medications. These consultations ~~shall~~ must be provided by a physician or licensed nurse practitioner in direct face-to-face contact with the ~~consumer~~ participant and incorporated into the individual plan with the type, amount, and duration of the service specified.

~~(4-5-00)~~(10-1-03)T

### 807. PSYCHIATRIC SERVICES.

Psychiatric evaluations and services for the purpose of establishing a diagnosis, identifying ~~consumer~~ participant strengths and needs, and recommending or implementing interventions to address each need. These evaluations and services ~~shall~~ must be conducted by a physician in direct face-to-face contact with the ~~consumer~~ participant and incorporated into the ~~consumer's~~ participant's individual plan with the type, amount, and duration of service specified.

~~(4-5-00)~~(10-1-03)T

### 808. INTENSIVE BEHAVIORAL INTERVENTION (IBI).

**01. Individualized And Comprehensive Interventions.** Individualized and comprehensive interventions used on a short term, one-to-one basis that have been shown to be effective and produce measurable outcomes which diminish behaviors that interfere with the development and use of language and appropriate social interaction skills or broaden an otherwise severely restricted range of interest.

(10-1-03)T

**02. Service Availability.** Intensive Behavioral Intervention is available only to children birth through

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age twenty-one (21) who have self-injurious, aggressive or severely maladaptive behavior and severe deficits in the following areas: ~~(4-5-00)~~(10-1-03)T

~~01a.~~ Verbal ~~A~~and ~~N~~nonverbal ~~C~~ommunication; or ~~(4-5-00)~~(10-1-03)T

~~02b.~~ Social ~~I~~nteraction; or ~~(4-5-00)~~(10-1-03)T

~~03c.~~ Leisure ~~A~~and ~~P~~lay ~~S~~kills. ~~(4-5-00)~~(10-1-03)T

#### 809. QUALIFICATIONS TO PROVIDE INTENSIVE BEHAVIORAL INTERVENTION (IBI).

A person qualified to provide or direct the provision of Intensive Behavioral Intervention (IBI) must meet the following requirements: (5-3-03)

**01. Degree.** A qualified IBI professional must hold at least a bachelor's degree in a health, human services, educational, behavioral science or counseling field from a nationally accredited university or college. (5-3-03)

**02. Experience.** An individual applying for IBI paraprofessional or professional certification must be able to provide documentation of one (1) year's supervised experience working with children with developmental disabilities. The year's experience must include one thousand (1,000) hours of direct contact or care of children in a behavioral context with developmental disabilities. (5-3-03)

**03. Training And Certification.** Qualified IBI professionals and paraprofessionals must complete and pass a Department approved training course and examination for certification. The training must include a curriculum that addresses standards of competence for the provision of intensive behavioral intervention and ethical standards. Specifically, the curriculum must include: assessment of individuals, behavioral management, services or treatment of individuals, supervised practical experience, and an observation of demonstrated competencies. An individual applying for IBI professional certification or to be certified as an IBI trainer must also be able to demonstrate their competency in the provision of IBI services by passing a certification examination. A certified IBI professional who has a break in the provision of IBI services of more than one (1) year will be required to meet any additional Department requirements implemented subsequent to the individual's certification. (5-3-03)

**04. Individuals Previously Certified.** Beginning July 1, 2003, an individual certified as an IBI professional prior to that date ~~shall~~ must continue to be certified as an IBI professional as long as they meet the requirements of Subsection 809.03 of these rules. ~~(5-3-03)~~(10-1-03)T

**05. Use Of Paraprofessionals.** An aide or therapy technician who has completed Department approved training and certification may be used to provide Intensive Behavioral Intervention under the supervision of a professional who is certified by the Department to provide Intensive Behavioral Intervention. (4-5-00)

**a.** The agency ~~shall~~ must assure adequate professional supervision during its services hours; and ~~(4-5-00)~~(10-1-03)T

**b.** Paraprofessionals ~~shall~~ must not conduct evaluations or establish the Implementation Plan. These activities ~~shall~~ must be conducted by a professional qualified to provide or direct the provision of Intensive Behavioral Intervention; and ~~(4-5-00)~~(10-1-03)T

**c.** The professional ~~shall~~ must, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and ~~(4-5-00)~~(10-1-03)T

**d.** A professional ~~shall~~ must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ~~(4-5-00)~~(10-1-03)T

**06. Limitation To Service Provision By A Paraprofessional.** Intensive Behavioral Intervention provided by a paraprofessional is limited to ninety percent (90%) of the direct intervention time. The remaining ten percent (10%) of the direct intervention time must be provided by the professional qualified to provide or direct the

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provision of Intensive Behavioral Intervention. (4-5-00)

#### **~~810. STAFFING REQUIREMENTS FOR AGENCIES.~~**

- ~~01. **Physician.** The agency shall have a physician available a sufficient amount of time to:~~ (7-1-97)
- ~~a. Review medical/social history information for the purpose of ordering appropriate evaluations;~~  
and (7-1-97)
- ~~b. Perform necessary medical assessments; and~~ (7-1-97)
- ~~c. Review and recommend the services identified in the Individual Program Plans; and~~ (7-1-97)
- ~~d. Participate in annual reviews of consumer services to determine continued appropriateness of the plan if applicable.~~ (7-1-97)
- ~~02. **Professionals.** The agency shall have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement:~~ (7-1-97)
- ~~a. Audiologist or speech and language pathologist; and~~ (7-1-97)
- ~~b. Developmental specialist; and~~ (7-1-97)
- ~~c. Occupational therapist; and~~ (7-1-97)
- ~~d. Physical therapist; and~~ (7-1-97)
- ~~e. Physician; and~~ (7-1-97)
- ~~f. Psychologist; and~~ (7-1-97)
- ~~g. Social worker.~~ (7-1-97)

#### **~~8140. INITIAL PRIOR AUTHORIZATION.~~**

Initial Intensive Behavioral Intervention services or consultation must be prior authorized by the Department. The DDA must submit evidence of each child's eligibility for Intensive Behavioral Intervention, the Implementation Plan, the number of hours of service requested, and the measurable outcomes expected as the result of the intervention. (4-5-00)

#### **~~8121. PROGRESS REPORTS, EVALUATION, AND CONTINUED PRIOR AUTHORIZATION.~~**

The provider must submit a report on the child's progress toward Intensive Behavioral Intervention outcomes to the Department every one hundred twenty (120) days and seek prior authorization for continuation or modification of services. On an annual basis, a multi disciplinary treatment team that includes at a minimum, the parent(s), staff psychologist and staff providing services to the child, will review current evaluations and make a recommendation for continuation or modification of the intervention. (4-5-00)

#### **~~8132. PARENT AND STAFF CONSULTATION.~~**

Professionals may provide consultation to parents and to other staff who provide therapy or care for the child in other disciplines to assure successful integration and transition from Intensive Behavioral Intervention to other therapies. (4-5-00)

#### **813. STAFFING REQUIREMENTS FOR AGENCIES.**

**01. Physician.** For participants whose services are governed by Section 801 of these rules, the agency must have a physician available a sufficient amount of time to: (10-1-03)T

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- a.** Review medical/social history information for the purpose of ordering appropriate evaluations; and (10-1-03)T
- b.** Perform necessary medical assessments; and (10-1-03)T
- c.** Review and recommend the services identified in the Individual Program Plans; and (10-1-03)T
- d.** Participate in annual reviews of participant services to determine continued appropriateness of the plan if applicable. (10-1-03)T

**02. Professionals.** The agency must have available, at a minimum, the qualified DDP as employees of the agency or through formal written agreement; (10-1-03)T

- a.** Audiologist or speech and language pathologist; and (10-1-03)T
- b.** Developmental specialist; and (10-1-03)T
- c.** Occupational therapist; and (10-1-03)T
- d.** Physical therapist; and (10-1-03)T
- e.** Physician; and (10-1-03)T
- f.** Psychologist; and (10-1-03)T
- g.** Social worker. (10-1-03)T

**814. -- 819. (RESERVED).**

#### **820. PAYMENT PROCEDURES.**

Payment for agency services ~~shall~~ must be in accordance with rates, forms, policies and procedures established by the Department. Payment for services is contingent upon documentation in each ~~consumer's~~ participant's record which supports the type and amount of each service based on the agency's integrated records system and compliance with the requirements specified under Section 802 of ~~this chapter~~ these rules. (7-1-97)(10-1-03)T

#### **821. COOPERATION OF SERVICES.**

Each DDA ~~shall~~ must act in cooperation with other agencies providing services to ~~consumers~~ participants to maximize learning. Services with which coordination and integration ~~shall~~ must occur include: (7-1-97)(10-1-03)T

**01. Children's Services.** DDA's ~~shall~~ must refer a child of mandatory school attendance age, seven (7) through sixteen (16), to the local school district for consideration for education and related services under the provisions of the Individuals with Disabilities Education Act (IDEA). The DDA may provide services beyond those that the school is obligated to provide during regular school hours. These related services include audiology, psychotherapy services, physician's services, developmental therapy, occupational therapy, physical therapy and speech pathology. The ~~consumer's~~ participant's record ~~shall~~ must contain an Individualized Education Plan for each child of school age, including any recommendations for Extended School Year. The DDA ~~shall~~ must send a current copy of the child's Individual Program Plan to his school. (3-30-01)(10-1-03)T

**02. Services Through School District.** Services provided through a school district contract and reimbursed by the school district are not required to meet DDA rules, nor are they reimbursable as DDA services. (7-1-97)

**822. -- 899. (RESERVED).**

#### **900. ADDITIONAL STANDARDS FOR PERSONNEL PROVIDING DEVELOPMENTAL DISABILITY SERVICES.**



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**01. Professionals.** Except as provided in Subsection 900.02 of ~~this section~~ these rules, all personnel employed by an agency for the purpose of providing developmental disabilities services after October 6, 1988, ~~shall~~ must be DDP's. ~~(7-1-97)(10-1-03)T~~

**02. Paraprofessionals.** Paraprofessionals, such as aides or therapy technicians, may be used by an agency to provide developmental disabilities services if they are under the supervision of a DDP. (7-1-97)

a. The agency ~~shall~~ must assure adequate professional supervision during its service hours; and ~~(7-1-97)(10-1-03)T~~

b. There ~~shall~~ must be a minimum of one (1) qualified staff, who may be a paraprofessional or a DDP, providing direct services for every twelve (12) individuals. Additional staff ~~shall~~ must be added, as necessary, to meet the needs of each individual served; and ~~(7-1-97)(10-1-03)T~~

c. Aides or therapy technicians utilized to assist in the provision of physical therapy services may do so only when a physical therapist is present at the site of service delivery; and (7-1-97)

d. Paraprofessionals ~~shall~~ must not conduct ~~consumer~~ participant evaluations or establish the Implementation Program Plan. These activities ~~shall~~ must be conducted by a DDP; and ~~(7-1-97)(10-1-03)T~~

e. A professional ~~shall~~ must, on a weekly basis or more often if necessary, give instructions, review progress and provide training on the program(s) and procedures to be followed; and ~~(7-1-97)(10-1-03)T~~

f. A professional ~~shall~~ must, on a monthly basis or more often if necessary, observe and review the work performed by the paraprofessional to assure the paraprofessional has been trained on the program(s) and demonstrates the necessary skills to correctly implement the program(s). ~~(7-1-97)(10-1-03)T~~

**03. Specified Service Providers.** In accordance with Section 800 of these rules, only specified developmental disabilities service providers may provide service within the designated element of service. (7-1-97)

**04. Administrative Staffing.** The program administrator ~~shall~~ must be accountable for all service elements of a developmental disabilities program and ~~shall~~ must be employed on a continuous regularly scheduled basis. ~~(7-1-97)(10-1-03)T~~

a. The program administrator ~~shall~~ must be a DDP as defined in these rules. ~~(7-1-97)(10-1-03)T~~

b. If the administrator is not a DDP, a DDP ~~shall~~ must be employed on a continuous regularly scheduled basis and ~~shall~~ must be responsible for the service elements of the developmental disabilities program; ~~(7-1-97)(10-1-03)T~~

c. Either the program administrator or the DDP ~~shall~~ must have two (2) years of supervisory or management experience providing developmental disabilities services to individuals with developmental disabilities. ~~(7-1-97)(10-1-03)T~~

### **901. VOLUNTEERS.**

If volunteers are utilized, the program ~~shall~~ must establish policies and procedures governing the screening, training and utilization of volunteer workers for delivery of services. ~~(7-1-97)(10-1-03)T~~

### **902. TRAINING.**

Each agency designated under these rules ~~shall~~ must provide ongoing training for staff and volunteers. ~~(7-1-97)(10-1-03)T~~

**01. Annual Training.** A minimum of twelve (12) hours of formal training ~~shall~~ must be provided. ~~(7-1-97)(10-1-03)T~~

a. Within ninety (90) days of employment, each staff member will be certified in first aid and CPR; and (7-1-97)

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b. In addition, a minimum of twelve (12) hours of training areas including fire safety, behavior management, and skill development in the area of rehabilitation or habilitation of persons with developmental disabilities on an annual basis. (7-1-97)

**02. Sufficient Training.** Training of staff and volunteers ~~shall~~ must be sufficient to ensure the following as applicable to their work assignments and responsibilities: (~~7-1-97~~)(10-1-03)T

a. Correct and consistent implementation of ~~consumer~~ participant individual program plans and implementation plans, to achieve individual objectives; and (~~7-1-97~~)(10-1-03)T

b. Optimal independence of all individuals receiving services is encouraged, supported and reinforced through appropriate activities, opportunities, and training; and (7-1-97)

c. Correct and appropriate use of assistive technology used by individuals obtaining services; and (7-1-97)

d. Accurate record keeping and data collection procedures; and (7-1-97)

e. Consistent use of behavioral and developmental programming principles and the use of positive behavioral intervention techniques; and (7-1-97)

f. Adequate observation, review and monitoring of staff, volunteer and ~~consumer~~ participant performance to promote the achievement of ~~consumer~~ participant objectives; and (~~7-1-97~~)(10-1-03)T

g. Each ~~consumer's~~ participant's rights, advocacy resources, confidentiality, safety and welfare; and (~~7-1-97~~)(10-1-03)T

h. The proper implementation of all policies and procedures developed by the agency. (7-1-97)

**903. -- 919. (RESERVED).**

### **920. BUILDING STANDARDS.**

The requirements under this section apply when an agency is providing center-based services. (7-1-97)

**01. Accessibility.** Agencies designated under these rules ~~shall~~ must be responsive to the needs of the service area and persons receiving services and accessible to persons with disabilities as defined in 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and the uniform federal accessibility standard. (~~7-1-97~~)(10-1-03)T

**02. Environment.** The agency ~~shall~~ must be designed and equipped to meet the needs of each ~~consumer~~ participant including, but not limited to, factors such as sufficient space, equipment, lighting and noise control. (~~7-1-97~~)(10-1-03)T

**03. Capacity.** Agencies ~~shall~~ must serve no more than forty (40) persons with developmental disabilities on site at a given time. Agencies may apply to the Director for a waiver ~~pursuant to~~ under these rules. The decision of the Director may be reviewed by the Board. Agencies are encouraged to include persons without disabilities in their programs or to integrate persons with disabilities into community activities for part of the day. (~~7-1-97~~)(10-1-03)T

**04. Fire And Safety Standards.** (7-1-97)

a. Buildings on the premises used as facilities ~~shall~~ must meet all local and state codes concerning fire and life safety that are applicable to a DDA. The owner/operator ~~shall~~ must have the facility inspected at least annually by the local fire authority. In the absence of a local fire authority, such inspections ~~shall~~ must be obtained from the Idaho State Fire Marshall's office. A copy of the inspection ~~shall~~ must be made available to the licensing agency upon request and ~~shall~~ must include documentation of any necessary corrective action taken on violations

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cited; and

(7-1-97)(10-1-03)T

b. The facility ~~shall~~ must be structurally sound and ~~shall~~ must be maintained and equipped to assure the safety of ~~consumers~~ participants, employees and the public; and

(7-1-97)(10-1-03)T

c. On the premises of all facilities where natural or man-made hazards are present, suitable fences, guards or railings ~~shall~~ must be provided to protect ~~consumers~~ participants; and

(7-1-97)(10-1-03)T

d. The premises and all buildings used as facilities ~~shall~~ must be kept free from the accumulation of weeds, trash and rubbish; and

(7-1-97)(10-1-03)T

e. Portable heating devices ~~shall~~ must be prohibited except units that have heating elements that are limited to not more than two hundred twelve (212) degrees Fahrenheit. The use of unvented, fuel-fired heating devices of any kind ~~shall~~ must be prohibited. All portable space heaters must be U.L. approved as well as approved by the local fire or building authority; and

(7-1-97)(10-1-03)T

f. Quantities of flammable or combustible materials deemed hazardous by the licensing agency ~~shall~~ must not be stored in the facility; and

(7-1-97)(10-1-03)T

g. All hazardous or toxic substances ~~shall~~ must be properly labeled and stored under lock and key; and

(7-1-97)(10-1-03)T

h. Water temperatures in areas accessed by ~~consumers~~ ~~shall~~ participants must not exceed one hundred twenty (120) degrees Fahrenheit; and

(7-1-97)(10-1-03)T

i. Portable fire extinguishers ~~shall~~ must be installed throughout the facility. Numbers, types and location ~~shall~~ must be directed by the applicable fire authority noted in Subsection 920.04.a. of these rules; and

(7-1-97)(10-1-03)T

j. Electrical installations and equipment ~~shall~~ must comply with all applicable local or state electrical requirements. In addition, equipment designed to be grounded ~~shall~~ must be maintained in a grounded condition and extension cords and multiple electrical outlet adapters ~~shall~~ must not be utilized unless U.L. approved and the numbers, location, and use of them are approved, in writing, by the local fire or building authority.

(7-1-97)(10-1-03)T

k. There ~~shall~~ must be a telephone available on the premises for use in the event of an emergency. Emergency telephone numbers ~~shall~~ must be posted near the telephone; and

(7-1-97)(10-1-03)T

l. Furnishings, decorations or other objects ~~shall~~ must not obstruct exits or access to exits.

(7-1-97)(10-1-03)T

**05. Evacuation Plans.** Evacuation plans ~~shall~~ must be posted throughout the building. Plans ~~shall~~ must indicate point of orientation, location of all fire extinguishers, location of all fire exits, and designated meeting area outside of building.

(7-1-97)(10-1-03)T

a. Emergency plans and training requirements:

(7-1-97)

b. There ~~shall~~ must be written policies and procedures covering the protection of all persons in the event of fire or other emergencies; and

(7-1-97)(10-1-03)T

c. All employees ~~shall~~ must participate in fire and safety training upon employment and at least annually thereafter; and

(7-1-97)(10-1-03)T

d. All employees and ~~consumers~~ ~~shall~~ participants must engage in quarterly fire drills. At least two (2) of these fire drills ~~shall~~ must include evacuation of the building; and

(7-1-97)(10-1-03)T

e. A brief summary of the fire drill and the response of the employees and ~~consumers~~ ~~shall~~

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participants must be written and maintained on file. The summary ~~shall~~ must indicate the date and time the drill occurred, problems encountered and corrective action taken. (7-1-97)(10-1-03)T

**06. Food Preparation And Storage.** (7-1-97)

a. If foods are prepared in the agency, they ~~shall~~ must be prepared by sanitary methods. (7-1-97)(10-1-03)T

b. Except during actual preparation time, cold perishable foods ~~shall~~ must be stored and served under forty-five (45F) degrees Fahrenheit and hot perishable foods ~~shall~~ must be stored and served over one hundred forty (140F) degrees Fahrenheit. (7-1-97)(10-1-03)T

c. Refrigerators and freezers used to store ~~consumer~~ participant lunches and other perishable foods used by ~~consumers~~ participants, ~~shall~~ must be equipped with a reliable, easily-readable thermometer. Refrigerators ~~shall~~ must be maintained at forty-five (45F) degrees Fahrenheit or below. Freezers ~~shall~~ must be maintained at zero (0F) to ten (10F) degrees Fahrenheit or below. (7-1-97)(10-1-03)T

d. When meals are prepared or provided for by the agency, meals will meet the nutritional, dietary and individual needs of each ~~consumer~~ participant. (7-1-97)(10-1-03)T

**07. Housekeeping And Maintenance Services.** (7-1-97)

a. The interior and exterior of the agency ~~shall~~ must be maintained in a clean, safe and orderly manner and ~~shall~~ must be kept in good repair; and (7-1-97)(10-1-03)T

b. Deodorizers cannot be used to cover odors caused by poor housekeeping or unsanitary conditions; and (7-1-97)

c. All housekeeping equipment ~~shall~~ must be in good repair and maintained in a clean, safe and sanitary manner; and (7-1-97)(10-1-03)T

d. The agency ~~shall~~ must be maintained free from infestations of insects, rodents and other pests; and (7-1-97)(10-1-03)T

e. The facility ~~shall~~ must maintain the temperature and humidity within a normal comfort range by heating, air conditioning or other means. (7-1-97)(10-1-03)T

**08. Vehicle Safety.** If the DDA provides transportation, a preventive maintenance program will be in place for each agency owned or leased vehicle, including but not limited to: (7-1-97)

a. Inspections, liability insurance, licensed drivers, and other maintenance to insure safety; and (7-1-97)

b. Coordination with transportation providers when the DDA does not provide the transportation. (7-1-97)

**921. HEALTH.**

**01. Policies And Procedures.** The agency ~~shall~~ must develop policies and procedures which describe how the agency will assure that staff is free from communicable disease and how it will protect ~~consumers~~ participants from exposure to other individuals exhibiting symptoms of illness. (7-1-97)(10-1-03)T

**02. Employees.** Each employee with direct contact with ~~consumers~~ participants ~~shall~~ must be free of communicable disease and infected skin lesions while on duty. (7-1-97)(10-1-03)T

**03. Handling Of ~~Consumer's~~ Participant's Medications.** Personnel of the agency ~~shall~~ must not administer medications unless legally authorized to do so. Personnel may assist the ~~consumer~~ participant to take his

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own medication under the following conditions:

(7-1-97)(10-1-03)T

a. The medication ~~shall~~ must be brought by the ~~consumer~~ participant in a prepackaged container which is appropriately labeled with the name of the medication, dosage and time and amount to be taken. Each medication ~~shall~~ must be packaged separately to avoid mistakes in identification unless packaged in Medisets or a similar system.

(7-1-97)(10-1-03)T

b. Only licensed nurses and other professionals legally authorized to administer medications may give ~~consumers~~ participants injectable medications.

(7-1-97)(10-1-03)T

c. No medications ~~shall~~ must be given except under the verbal or written orders of a physician. Evidence of the written or verbal order ~~shall~~ must be maintained in the ~~consumer's~~ participant's record. Medisets labeled by a pharmacist and supplied to the ~~consumer~~ participant on a weekly basis may serve as written evidence of a physician's order. An original prescription bottle labeled by a pharmacist describing the current physician's orders/instructions for use, may also serve as written evidence of a physician's orders.

(7-1-97)(10-1-03)T

d. The agency ~~shall~~ must be responsible for the safeguarding of the ~~consumer's~~ participant's medications while he is at the agency or in the community.

(7-1-97)(10-1-03)T

e. Medications which are no longer used by the ~~consumer~~ participant ~~shall~~ must not be retained by agency staff. These ~~shall~~ must be returned to the pharmacist, the ~~consumer~~ participant, or person responsible for the ~~consumer's~~ participant's home care.

(7-1-97)(10-1-03)T

f. Medications ~~shall~~ must not be borrowed between ~~consumers~~ participants.

(7-1-97)(10-1-03)T

04. **Accident/Injury Reports.** Accident/injury reports ~~shall~~ must be completed for all such incidents experienced by ~~consumers~~ participants receiving services.

(7-1-97)(10-1-03)T

#### 922. COMMUNITY SITES.

The requirements under this section apply when an agency is providing community-based services.

(7-1-97)

01. **Accessibility.** The community-based setting ~~shall~~ must be accessible, safe and appropriate for each ~~consumer~~ participant.

(7-1-97)(10-1-03)T

02. **Environment.** The community-based setting ~~shall~~ must be designed and equipped to meet the needs of each ~~consumer~~ participant including, but not limited to, factors such as sufficient space, equipment, lighting, and noise control.

(7-1-97)(10-1-03)T

03. **Training Group Size Sessions.** The community-based services ~~shall~~ must occur in integrated inclusive settings and with no more than three (3) ~~consumers~~ participants per trainer at each training session.

(7-1-97)(10-1-03)T

#### 923. ANNUAL PROGRESS REPORT AND PLAN.

By June 30 of each year, each DDA ~~shall~~ must submit an annual progress report and plan covering the current fiscal year to the state developmental disability authority.

(7-1-97)(10-1-03)T

#### 924. STATE PLAN.

Each agency ~~shall~~ must be required, as needed, to participate in the state developmental disabilities plan development by completing an annual needs assessment survey or public hearing on services for Idahoans with disabilities.

(7-1-97)(10-1-03)T

#### 925. AFFIRMATIVE ACTION.

01. **Equal Employment Opportunity.** It is the policy of the Department to promote the objectives of equal employment opportunity and fair labor practice laws of the United States and the state of Idaho.

(7-1-97)

02. **Nondiscrimination.** No employee of a agency designated under these rules will, in the course of

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serving ~~consumer~~ participant needs, discriminate against any individual on the basis of race, color, national origin, religion, ~~sex~~ gender, age, or physical/mental disability. (7-1-97)(10-1-03)T

926. -- 9979. (RESERVED).

**~~998. ADMINISTRATIVE PROVISIONS.~~**

~~Contested case hearings shall be governed according to the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".~~ (7-1-97)

**~~999. CONFIDENTIALITY OF RECORDS.~~**

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16.05.01, "Use and Disclosure of Department Records". In addition:~~ (7-1-97)

~~01. Storage Of Records. All consumer information including, but not limited to, consumer records shall be maintained and stored in a manner which ensures consumer confidentiality.~~ (7-1-97)

~~02. Written Consent. Consumer information and records shall not be provided to individuals or agencies not legally authorized to receive it without the informed written consent of the consumer and guardian where applicable.~~ (7-1-97)

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### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective December 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202 and 56-203, Idaho Code and Section 2602, Title XXVI, Public Law No. 97-203, also known as the Low-Income Home Energy Assistance Program.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

To avoid having to change this rule on an annual basis and to reduce procedural steps in the administrative rules performed by state employees, the benefit determination procedures and the percentages will be placed in the Intake Manual used for Low Income Home Energy Assistance Program. A summary for determining the annual benefit will replace the procedures in rule.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(c), Idaho Code and are necessary in order to confer a benefit.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking confers a benefit to the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Linda Stokes at (208) 334-5734.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 22, 2003.

DATED this 5th day of November, 2002.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
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Boise, Idaho 83720-0036  
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## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0414-0301

#### 204. BENEFIT DETERMINATION.

Eligible participant households will have their LIHEAP benefit determined ~~using Subsections 204.01 through 204.03 of these rules:~~ as follows: ~~(4-5-00)(12-1-02)T~~

**01. Actual Consumption Method.** The actual consumption method is used if the eligible participant household heats ~~their~~ its residence with either natural gas or electricity and ~~have~~ has resided in the residence for one (1) year or longer. ~~Use table 204.01 to determine the base benefit under the Actual Consumption Method. The minimum base benefit is one hundred fifteen dollars (\$115). The maximum base benefit is five hundred fifty dollars (\$550).~~ Household benefit is calculated by multiplying the energy consumption cost by an annual benefit calculation factor. Annual minimum and maximum benefits per household are published each year in the Intake Manual used for LIHEAP

TABLE 204.01 ACTUAL CONSUMPTION METHOD	
Step 1.	List the annual consumption cost, excluding July, August and September, furnished by the energy supplier.
Step 2.	Determine if the eligible participant household resides in subsidized housing. If so, the base benefit is always low burden. Skip Step 3 in this case, and go to Step 4.
Step 3.	Divide the annual consumption cost from Step 1 by annualized countable income reported by the household. This gives the percentage of energy burden. 0% to 5% energy burden is low. 6% to 10% energy burden is average. 11% and above energy burden is high.
Step 4.	If the percentage of energy burden from Step 3 is low, multiply the annual consumption cost from Step 1 by 24% to determine the base benefit. If the percentage of energy burden from Step 3 is average, multiply the annual consumption cost from Step 1 by 29% to determine the base benefit. If the percentage of energy burden from Step 3 is high, multiply the annual consumption cost from Step 1 by 32% to determine the base benefit.

~~(3-15-02)(12-1-02)T~~

**02. Average Annual Cost Method.** The average annual cost method is used when the eligible participant household's actual consumption cost is unknown, or ~~they~~ it uses a heating source other than electricity or natural gas. Average cost is ~~established based on~~ determined by information gathered from provided by energy suppliers throughout the state. ~~Average cost and~~ is published in as the ~~a~~Annual Heating eCost eChart, which is available from the Department of Health and Welfare, ~~Bureau of Benefit Program Operations, Grants Unit.~~ The average cost is specific to county of residence and ~~source of home energy identify the average cost from the chart the household's heating source.~~ Use table 204.02 to determine the base benefit under Household benefit is calculated by multiplying the Average Annual Cost Method by an annual benefit calculation factor.

TABLE 204.02 AVERAGE ANNUAL COST METHOD	
Step 1.	<del>Identify the household's average annual heating cost from the annual heating cost chart available from the Department of Health and Welfare, Bureau of Benefit Program Operations, Grants Unit.</del>
Step 2.	<del>Determine if the eligible participant household resides in subsidized housing. If so, the base benefit is always low burden. Skip Step 3 in this case, and go to Step 4.</del>



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**DEPATMENT OF HEALTH AND WELFARE**  
**Low Income Home Energy Assistance Program**

**Docket No. 16-0414-0301**  
**Temporary and Proposed Rulemaking**

<b>TABLE 204.02 AVERAGE ANNUAL COST METHOD</b>	
<b>Step 3.</b>	<i>Divide the average annual heating cost from Step 1 by annualized countable income reported by the household. This gives the percentage of energy burden. 0% to 5% energy burden is low. 6% to 10% energy burden is average. 11% and above energy burden is high.</i>
<b>Step 4.</b>	<i>If the percentage of energy burden from Step 3 is low, multiply the annual average heating cost from Step 1 by 24% to determine the base benefit.          If the percentage of energy burden from Step 3 is average, multiply the annual average heating cost from Step 1 by 29% to determine the base benefit.          If the percentage of energy burden from Step 3 is high, multiply the annual average heating cost from Step 1 by 32% to determine the base benefit.</i>

~~(3-15-02)~~(12-1-02)T

**03. Annual Benefit Calculation Factor.** Annual benefit calculation factors are determined each year based on the amount of federal funding for the upcoming program year. The particular factor used for a household's benefit calculation is determined by the household's energy cost burden (high, medium or low) expressed as a percentage of annualized income. A heating burden of zero percent (0%) to five percent (5%) is considered low, six percent (6%) to ten percent (10%) is medium, and eleven percent (11%) or greater is high. Benefit calculation methodology and the current benefit calculation factors are published in the Intake Manual used for LIHEAP, available at the Department of Health and Welfare, and community action agencies. ~~(12-1-02)~~T

**034. Adjusting LIHEAP Benefit.** ~~For both actual consumption and average annual cost methods,~~ Add an adjusted benefit of twenty-five dollars (\$25) to the base benefit ~~if the eligible participant~~ of households containing at least one (1) of the following: ~~(4-5-00)~~(12-1-02)T

- a. Child under six (6) years of age. (4-5-00)
- b. Individual with disabilities as declared on the LIHEAP application form. (4-5-00)
- c. Individual sixty (60) years of age or older. (4-5-00)
- d. ~~Household contains m~~More than one (1) member. ~~(4-5-00)~~(12-1-02)T

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.04.14 - RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

**DOCKET NO. 16-0414-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code and Section 2602, Title XXVI, Public Law No. 97-203, also known as the Low Income Home Energy Assistance Program.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the January 2003 Administrative Bulletin, Volume 03-1, pages 105 through 107.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Linda Stokes at (208) 334-5734.

DATED this 7th day of April, 2002.

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#### **IDAPA 16, TITLE 04, CHAPTER 14**

#### **RULES GOVERNING THE LOW INCOME HOME ENERGY ASSISTANCE PROGRAM**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-1, January 1, 2003, pages 105 through 107.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES**

**DOCKET NO. 16-0417-0301**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendments to the temporary rule is October 1, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 39-4601 et seq. (Developmental Disabilities Services and Facilities Act), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In response to comments received from the Board of Health and Welfare, testimony presented at public hearings, and written comments submitted by the public and Department staff, the following amendments have been made to the Temporary rule:

1. Revised the statutory citation in Section 000 regarding legal authority;
2. Revised the definition of Person-Centered Planning Process in Subsection 011.07;
3. Added a clarifying requirement in Subsection 202.01.b. that Administrators for Residential Habilitation Agencies satisfactorily complete a criminal history check;
4. In Subsection 301.03.j. clarified that all employees of Residential Habilitation Agencies must satisfactorily complete (not simply complete) a criminal history check; and
5. In Subsection 302.01.b. clarified that the required prior authorization of services must be in accordance with the new chapter regarding prior authorization, IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule.

Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rules was published in the September 3, 2003, Administrative Bulletin, Volume 03-9, pages 171 through 186.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Diane Helton at (208) 334-5512 or Mary Wells at (208) 364-1840.

DATED this 31st day of October, 2003.

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**DEPARTMENT OF HEALTH AND WELFARE**  
**Residential Habilitation Agencies**

**Docket No. 16-0417-0301 - Pending Rule**  
**Amendment to Temporary Rule**

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### IDAPA 16, TITLE 04, CHAPTER 17

#### RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, pages 171 through 186.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0417-0301

#### **SECTION 000 (Entire Section)**

##### **000. LEGAL AUTHORITY.**

The Idaho Legislature, under the Developmental Disabilities Services and Facilities Act, Sections 39-460~~51~~ et seq., Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules. ~~(10-1-03)F~~(10-1-03)T

#### **SUBSECTION 011.07 and 011.08 (Partial Section)**

##### **011. DEFINITIONS -- M THROUGH Z.**

For the purposes of these rules the following terms are used as defined below:

(10-1-03)T

**07. Person-Centered Planning Process.** A planning team meeting facilitated by the plan developer, comprised of family and individuals ~~who are~~ significant to the participant ~~and~~ who collaborate with the participant to develop the plan of service. ~~This team is convened and facilitated by a plan developer.~~ ~~(10-1-03)F~~(10-1-03)T

**08. Person-Centered Planning Team.** The ~~participants~~ group who develops the plan of service, ~~which~~ This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the

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participant and the Department as important to the process.

~~(10-1-03)F~~(10-1-03)T

### SECTION 202 and SUBSECTION 202.01.b. (Partial Section)

#### 202. ADMINISTRATOR.

~~The An~~ administrator is responsible and accountable for implementing the policies and procedures approved by the governing authority.

~~(10-1-03)F~~(10-1-03)T

##### 01. Administrator Qualifications. Each agency must have a designated administrator who:

(10-1-03)T

b. Has ~~not been convicted of any felony or fraudulent practices~~ satisfactorily completed a criminal history check in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and

~~(7-1-95)~~(10-1-03)T

### SUBSECTION 301.03.j. (Partial Section)

#### 301. PERSONNEL.

03. **Personnel Records.** A record for each employee and affiliated residential habilitation provider must be maintained from date of hire or affiliation for not less than one (1) year after the employee or affiliated residential habilitation provider is no longer employed by the agency, and must include at least the following:

(10-1-03)T

j. Verification of satisfactory completion of criminal history checks in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and

~~(10-1-03)F~~(10-1-03)T

### SUBSECTION 302.01.b. (Partial Section)

#### 302. SERVICE PROVISION PROCEDURES.

01. **Admission Procedures.** The following criteria must apply to all participants receiving services from a residential habilitation agency:

(10-1-03)T

b. The agency must obtain authorization from the Department for reimbursement for each Medicaid-covered eligible waiver service prior to providing residential habilitation services in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services".

~~(10-1-03)F~~(10-1-03)T

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.04.17 - RULES GOVERNING RESIDENTIAL HABILITATION AGENCIES

DOCKET NO. 16-0417-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective October 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), and 39-4601, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearings concerning this rulemaking will be held as follows:

**Monday, October 6, 2003**  
**7:00 - 9:00 p.m.**  
**Region I**  
**1120 Ironwood Drive**  
**Coeur d'Alene, ID**

**Wednesday, October 8, 2003**  
**7:00 - 9:00 p.m.**  
**Region IV**  
**1720 Westgate Drive**  
**Boise, ID**

**Thursday, October 9, 2003**  
**7:00 - 9:00 p.m.**  
**Region VI**  
**421 Memorial Drive**  
**Pocatello, ID**

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

These rule changes are being made to support the implementation of the Department's new prior authorization process found in new chapter of rules, IDAPA 16.03.13, "Prior Authorization of Behavioral Health Services". The rule changes establish the requirement that access to Residential Habilitation Agency services be prior authorized. They also establish the requirement that Residential Habilitation agencies submit provider status reviews semiannually and annually. In those portions of the text dealing with the prior authorization process, citations have been inserted to refer the reader to IDAPA 16.03.13. Other changes have been made to align terminology and content with that in IDAPA 16.03.13. The sections required by the Office of Administrative Rules were updated.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect the public health, safety and welfare.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Department of Health and Welfare. However, during the past three (3) years, the Department has engaged both in extensive public participation efforts and a pilot program to gather public input on and subsequently develop and test the prior authorization process formalized in this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Diane Helton at (208) 334-0603 or Mary Wells at (208) 364-1955.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 23rd day of July, 2003.

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Rules Governing Residential Habilitation Agencies****Docket No. 16-0417-0301**  
**Temporary and Proposed Rulemaking**

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0417-0301

#### **000. LEGAL AUTHORITY.**

The Idaho Legislature, ~~pursuant to~~ under Section 39-4605, Idaho Code, has empowered the Board of Health and Welfare with broad authority to develop and coordinate services for persons with developmental disabilities, so that the needs of each such person can be met. The authority delegated includes the power to promulgate standards and rules. ~~(7-1-95)~~(10-1-03)T

#### **001. TITLE AND SCOPE.**

**01. Title.** ~~These rules are to be cited as~~ The title of these rules is IDAPA 16.04.17, “Rules Governing Residential Habilitation Agencies”. ~~(7-1-95)~~(10-1-03)T

**02. Scope.** These rules contain and establish standards and minimum requirements for residential habilitation agencies which provide services to persons with developmental disabilities under agreement and in connection with programs funded in any part by the Department of Health and Welfare. The provisions are intended to regulate agencies so that services to ~~consumers~~ participants will optimize ~~consumer~~ participant opportunities for independence and self-determination while assuring adequate supports, services, ~~consumer~~ participant satisfaction and health and safety. As a component of the service delivery system in Idaho for persons with developmental disabilities, residential habilitation agencies will provide individualized services and supports encouraging ~~consumer~~ participant choice, providing the greatest degree of independence possible, enhancing the quality of life, and maintaining community integration and participation. Services provided by such agencies are intended to be person-centered and ~~consumer~~ participant-driven, and based on a person-centered plan to meet each ~~consumer's~~ participant's needs for self-sufficiency, medical care and personal development with goals that safely encourage each ~~consumer~~ participant to become a productive member of the community in which he lives. Access to these services must be prior authorized in accordance with IDAPA 16.03.13, “Prior Authorization for Behavioral Health Services”. ~~(7-1-95)~~(10-1-03)T

#### **002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.**

There are no written interpretations for these rules. (10-1-03)T

#### **003. ADMINISTRATIVE APPEALS.**

Contested case hearings ~~shall~~ must be governed according to the provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings”. ~~(7-1-95)~~(10-1-03)T

#### **004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into this chapter of rules. (10-1-03)T

#### **005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-03)T

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Residential Habilitation Agencies

Docket No. 16-0417-0301  
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**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-03)T

**04. Telephone.** The telephone number for of the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-03)T

**05. Internet Website.** The Department's internet website is found at "http://www2.state.id.us/dhw/". (10-1-03)T

### **006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (10-1-03)T

**0047. -- 009. (RESERVED).**

### **010. DEFINITIONS -- A THROUGH N.**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**01. Abuse.** Any conduct of an employee, affiliated residential habilitation provider or contractor of an agency as a result of which a person suffers verbal aggression or humiliation, skin bruising, bleeding, malnutrition, sexual molestation, burns, fracture of any bone, subdural hematoma, soft tissue swelling, failure to thrive or death, or mental injury, and such condition or death is not justifiably explained, or where the history given concerning such condition or death, or the circumstances indicate that such condition or death, may not be the product of accidental occurrence ~~pursuant to~~ under Section 39-5202, Idaho Code. (7-1-95)(10-1-03)T

**02. Administrator.** The individual who is vested with primary responsibility for the direction and control of an agency, and who has power to legally bind the agency to contracts. (7-1-95)

**03. Advocate.** An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a person with developmental disabilities. A ~~consumer~~ participant may act as his own advocate. (7-1-95)(10-1-03)T

**04. Agency.** Any business entity that directly provides or affiliates with residential habilitation providers who provide residential habilitation services under a Home and Community Based Services waiver for adults with developmental disabilities. (7-1-95)

**05. Appeal.** A method to insure personal, civil and human rights by receiving, investigating, resolving, and documenting complaints related to the provision or termination of services of the residential habilitation services agency in accordance with IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-95)

**06. Audit.** A methodical examination and review. (7-1-95)

**07. Board.** The Idaho State Board of Health and Welfare. (7-1-95)

**08. Business Entity.** A public or private organization owned or operated by one (1) or more persons. (7-1-95)

**09. Certificate.** A permit to operate a residential habilitation agency. (7-1-95)

**10. Certifying Agency.** Regional units of the Department that conduct inspections and surveys and issue certificates based on the residential habilitation agency's compliance with this chapter. (7-1-95)



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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Residential Habilitation Agencies

Docket No. 16-0417-0301  
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**11. Chemical Restraint.** The use of any medication that results or is intended to result in the modification of behavior without an accompanying behavior management program. (7-1-95)

**12. Complaint Investigation.** An investigation of an agency to determine the validity of an allegation against it and to identify solutions to resolve conflicts between the complainant and the agency. (7-1-95)

~~**13. Consumer.** A person who is a recipient of residential habilitation services. (7-1-95)~~

**143. Department.** The Idaho Department of Health and Welfare. (7-1-95)

**154. Developmental Disability.** A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ~~(7-1-95)~~(10-1-03)T

**a.** Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other conditions found to be closely related to or similar to one of these impairments that requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and (7-1-95)

**b.** Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and (7-1-95)

**c.** Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. (7-1-95)

**165. Deficiency.** A determination of non-compliance with a specific rule or part of a rule. (7-1-95)

**176. Director.** Director of the Idaho Department of Health and Welfare or his designee. (7-1-95)

**187. Exploitation.** An action which may include the misuse of a vulnerable ~~consumer's~~ participant's funds, property, services, or resources by another person for profit or advantage. ~~(7-1-95)~~(10-1-03)T

**198. Full Certificate.** A certificate issued by the Department to residential habilitation agencies complying with this chapter. (7-1-95)

~~**2019. Governing Authority.** The designated person or persons who assume full responsibility for the conduct and operations of the residential habilitation services agency. (7-1-95)~~

**240. Government Unit.** The state, or any county, municipality, or other political subdivision, or any department, division, board or other agency thereof. (7-1-95)

**221. Guardian.** A legally-appointed person who has the care of the person or property of another, ~~pursuant to~~ under Section 66-404, Idaho Code. ~~(7-1-95)~~(10-1-03)T

**232. Implementation Plan.** Written documentation of ~~consumers'~~ participants' needs, desires, goals and measurable objectives, including documentation of planning, ongoing evaluation, data-based progress and ~~consumer participant~~ satisfaction of the program developed, implemented, and provided by the agency specific to the ~~Individual Support Plan~~ plan of service. ~~(7-1-95)~~(10-1-03)T

~~**24. Individual Support Plan.** The written individualized plan approved by the Department, which must be based on a person centered planning and assessment process outlining the consumers' needs, desires, goals and objectives and include the specific types, amounts, frequency and duration of waiver services to be provided by the agency. (7-1-95)~~

~~**25. Individual Support Plan Team.** The participants who develop the Individual Support Plan, which includes at minimum the consumer and the service coordinator chosen by the consumer. The Individual Support Plan~~

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Residential Habilitation Agencies

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~~team may include others identified by the consumer or agreed upon by the consumer and the Department as important to the process.~~ (7-1-95)

#### **011. DEFINITIONS -- M THROUGH Z.**

For the purposes of these rules the following terms are used as defined below: (10-1-03)T

**2601. Measurable Objective.** A statement which specifically describes the skill to be acquired or service/support to be provided, includes quantifiable criteria for determining progress towards and attainment of the service, support or skill, and identifies a projected date of attainment. (7-1-95)

**2702. Mechanical Restraint.** Any device that the ~~consumer~~ participant cannot remove easily that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body or environment. Excluded are devices used to achieve proper body position, balance, or alignment. (7-1-95)(10-1-03)T

**2803. Medication.** Any substance or drug used to treat a disease, condition or symptoms which may be taken orally, injected or used externally and is available through prescription or over-the-counter. (7-1-95)

**2904. Neglect.** The negligent failure to provide those goods or services which are reasonably necessary to sustain the life and health of a person ~~pursuant to~~ under Section 39-5302 (8), Idaho Code. (7-1-95)(10-1-03)T

**305. Outcome-Based Review.** An on-site review conducted by a trained reviewer authorized by the Department to determine ~~consumer~~ participant satisfaction with the services received and improvement or impact upon his lifestyle following implementation of the ~~Individual Support P~~plan of service. (7-1-95)(10-1-03)T

**06. Participant.** A person who receives health care services, is eligible for Medicaid, and who is receiving residential habilitation services. (10-1-03)T

**3407. Person-Centered Planning Process.** ~~A Department approved means by which the consumer and his Individual Support Plan team assess the needs, desires, goals and objectives of the consumer to develop and implement an Individual Support Plan. A planning team of family and individuals who are significant to the participant and who collaborate with the participant to develop the plan of service. This team is convened and facilitated by a plan developer.~~ (7-1-95)(10-1-03)T

**08. Person-Centered Planning Team.** The participants who develop the plan of service, which includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (10-1-03)T

**3209. Physical Restraint.** Any manual method that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. Excluded are physical guidance and prompting techniques of brief duration. (7-1-95)

**3310. Physician.** Any person licensed as required by Title 54, Chapter 18, Idaho Code. (7-1-95)

**11. Plan Developer.** A paid or nonpaid person identified by the participant who is responsible for developing one (1) plan of service and subsequent addenda that cover all services and supports, based on a person-centered planning process. (10-1-03)T

**12. Plan Monitor.** A person who oversees the provision of services on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (10-1-03)T

**13. Plan Of Service.** An initial or annual plan that identifies all services and supports based on a person-centered planning process. Plans are authorized annually every three hundred sixty-five (365) days. (10-1-03)T

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**14. Provider Status Review.** The written documentation that identifies the participant's progress toward goals defined in the plan of service. (10-1-03)T

**3415. Psychosocial Information.** A combined summary of psychological and social histories of a consumer participant designed to ~~inform~~ provide the ~~Individual Support Plan Team of and~~ person-centered planning team with an accurate reflection of the ~~consumer's~~ participant's current skills, abilities, and needs. (7-1-95)(10-1-03)T

**3516. Progress Note.** A written notation, dated and signed by a member of the ~~Individual Support Plan~~ person-centered planning team or service provider, that documents facts about the ~~consumer's~~ participant's assessment, services provided, and the ~~consumer's~~ participant's response during a given period of time. (7-1-95)(10-1-03)T

**3617. Punishment.** Any procedure in which an adverse consequence is presented that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a ~~consumer's~~ participant's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (7-1-95)(10-1-03)T

**3718. QMRP.** Qualified Mental Retardation Professional as defined in 42 CFR 483.430. (7-1-95)

**3819. Residential Habilitation.** Services consisting of an integrated array of individually-tailored services and supports furnished to an eligible ~~consumer~~ participant which are designed to assist them to reside successfully in their own homes, with their families, or alternate family home. (7-1-95)(10-1-03)T

**3920. Reviewer.** A person or other entity authorized by the Department to conduct reviews to determine compliance with the program requirements and ~~consumer~~ participant satisfaction with the services. (7-1-95)(10-1-03)T

**4021. Rule.** A requirement established by state, federal, or local government ~~pursuant to~~ under the law and having the effect of law. (7-1-95)(10-1-03)T

**4122. Seclusionary Time Out.** The contingent removal of an individual from a setting in which reinforcement is occurring that is designed to result in a decrease in the rate, intensity, duration or probability of the occurrence of a response, and entails the removal of the individual to an isolated setting. (7-1-95)

**4223. Substantial Compliance.** An agency is in substantial compliance with these rules when there are no deficiencies which would endanger the health, safety or welfare of the ~~consumers~~ participants. (7-1-95)(10-1-03)T

**4324. Supervision.** Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity. (7-1-95)

**44. Targeted Service Coordinator.** ~~A regionally enrolled provider of the Department who is qualified by training and experience to develop and coordinate individual supports and services for eligible consumers of the Department, as defined in IDAPA 16.03.09.118, "Rules Governing the Medical Assistance Program".~~ (7-1-95)

**25. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. (10-1-03)T

**26. Service Coordinator.** An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 118. This includes Targeted Service Coordinators. (10-1-03)T

**27. Services.** Services paid for by the Department that enable the individual to reside safely and effectively in the community. (10-1-03)T

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**28. Supports.** Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (10-1-03)T

**4529. Transition Plan.** An interim plan developed by the residential habilitation agency defining activities to assist the ~~consumer~~ participant to transition out of residential habilitation services from that agency. (7-1-95)(10-1-03)T

**4630. Waiver Services.** Individually tailored services and supports as amended under Waiver Number 0076.90 (B) provided by an agency to an eligible recipient to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage choice, and to achieve and maintain community integration and participation. (7-1-95)

**0142. -- 099. (RESERVED).**

### 100. CERTIFICATION - GENERAL REQUIREMENTS.

After, July 1, 1995, no person, firm, partnership, association or corporation within the state and no state or local public agency ~~shall~~ may operate, establish, manage, conduct or maintain a residential habilitation agency without first obtaining a valid certificate issued by the certifying agency of the Department. (7-1-95)(10-1-03)T

**01. Application.** An application for a certificate ~~shall~~ must be made to the regional office of the Department upon forms provided by it and ~~shall~~ must contain such information as it reasonably requires, which ~~shall~~ must include affirmative evidence of ability to comply with such reasonable standards and rules as are lawfully adopted by the Board. (7-1-95)(10-1-03)T

**02. Issuance - Full Certificate.** Upon receipt of an application for certification, the certifying agency ~~shall~~ must issue a certificate if the applicant meets the requirements established under this chapter. ~~A certificate, unless suspended or revoked, must be renewed each and every year by the certifying agency.~~ A certificate to provide residential habilitation services ~~shall~~ must be issued specifically for the persons or governmental units named in the application and ~~shall~~ is not be transferable or assignable except with written approval of the certifying agency. Every agency ~~shall~~ must be designated by a distinctive name in applying for a certificate, and the name ~~shall~~ must not be changed without first notifying the certifying agency in writing at least thirty (30) days prior to the date the proposed change in name is to be effective. Certificates ~~shall~~ must be posted in a conspicuous place on the certified premises. (7-1-95)(10-1-03)T

**03. Denial.** The certifying agency may deny any application when persuaded by evidence that such conditions exist as to endanger the health or safety of any ~~consumer~~ participant. (7-1-95)(10-1-03)T

a. Additional causes for denial of certificate may include: (7-1-95)

i. The residential habilitation agency does not meet the needs of ~~consumers~~ participants as written on the ~~Individual Support~~ plans of service or Implementation Plans which will violate the ~~consumers'~~ participants' rights; or (7-1-95)(10-1-03)T

ii. The residential habilitation agency does not meet requirements for certification to the extent that it hinders its ability to provide quality services that comply with the rules for residential habilitation agencies; or (7-1-95)

iii. The residential habilitation agency has a history of repeat deficiencies. (7-1-95)

b. Before denial is final, the certifying agency ~~shall~~ must provide the opportunity for a hearing at which time the owner or sponsor of an agency may appear and show cause why the certificate should not be denied. A waiver of a specific rule or standard may be granted by the certifying agency in the event that good cause is shown for such a waiver and providing that said waiver does not endanger the health, safety or rights of any ~~consumer~~ participant. The decision to grant a waiver ~~shall~~ must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the certifying agency. Contested case hearings, including denial and revocation, ~~shall~~ must be conducted ~~pursuant to~~ under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings".

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~~(7-1-95)(10-1-03)T~~

**04. Revocation.** The certifying agency may revoke any certificate when persuaded by the evidence that such conditions exist which endanger the health, safety, or welfare of any ~~consumer~~ participant under the responsibility of the agency, or that the agency is not in substantial compliance with these rules. Additional causes for revocations of a certificate may include:

~~(7-1-95)(10-1-03)T~~

- a. The agency has a history of repeat deficiencies; or (7-1-95)
- b. The agency has been denied or has had revoked any certificate to operate a health or residential habilitation agency or has been convicted of operating any residential habilitation agency without a certificate or has been enjoined from operating such agency within two (2) years from the date of application; or (7-1-95)
- c. The agency lacks personnel sufficient in number or qualifications by training, experience, or judgment, to properly provide services to the proposed or actual numbers, and abilities and disabilities of ~~consumers~~ participants; or ~~(7-1-95)(10-1-03)T~~
- d. The agency has been guilty of fraud or deceit or misrepresentation in the preparation of the application or other documents required by the certifying agency; or (7-1-95)
  - i. Has been guilty of fraud or deceit or misrepresentation or dishonesty associated with the operation of a certified residential habilitation agency; or (7-1-95)
  - ii. Has been guilty of negligence or abuse or neglect or assault or battery while associated with the provision of services in its operation; or (7-1-95)
- e. The agency refuses to allow inspection of all residential habilitation records; or (7-1-95)
- f. The agency is not in substantial compliance with the provisions for services of ~~consumers'~~ participants' personal, civil or human rights outlined in Subsections 402.01.a. through 402.01.h.g.; or ~~(7-1-95)(10-1-03)T~~
- g. When the Department finds the public health, safety, or welfare imperatively require emergency action, a certificate may be summarily suspended pending proceedings for revocation or other action. (7-1-95)

**05. Emergency Powers Of The Director.** In the event of an emergency endangering the life or safety of a ~~consumer~~ participant receiving services from an agency, the Director may summarily suspend or revoke any residential habilitation certificate. As soon thereafter as practicable, the Director ~~shall~~ must provide an opportunity for a hearing. ~~(7-1-95)(10-1-03)T~~

**06. Injunction To Prevent Operation Without Certificate.** Notwithstanding the existence or pursuit of any other remedy, the Department may in the manner provided by law, maintain an action in the name of the state for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an agency without a certificate required under this chapter. (7-1-95)

~~**07. Confidential Information.** Information received by the Department through filed reports, inspection, or as otherwise authorized under this chapter, shall not be disclosed publicly in such a manner as to identify consumers of residential habilitation agencies except in a proceeding involving the question of certification. Public disclosure of information shall be governed by IDAPA 16.05.01, "Use and Disclosure of Department Records". Nothing in this chapter, however, shall be construed, nor shall any rule be promulgated under this section, as to impair, restrict, or alter the confidentiality and privilege afforded the consumer and physician communications, including without limitation, documentation thereof in records of agencies, or communications to and with assisting persons, or entities, nor shall this chapter be construed to amend by implication such physician-consumer communication privilege as provided elsewhere in rule code, including without limitation, Section 9-320(4), Idaho Code, which shall remain inviolate. In addition to the information subject to public disclosure by law, the following information is also subject to disclosure:~~ ~~(7-1-95)~~

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- ~~a.~~ *Name of agency, its owner(s), the administrator, and location; and* (7-1-95)
- ~~b.~~ *Official findings of deficiencies based on survey reports by the certifying agency; and* (7-1-95)
- ~~c.~~ *Plan of correction between the residential habilitation agency and the certifying agency; and* (7-1-95)
- ~~d.~~ *Comments furnished by the residential habilitation agency and the certifying agency.* (7-1-95)

**087. Conformity.** Applicants for certification and certified residential habilitation agencies ~~shall~~ must conform to all applicable rules of the Department. (7-1-95)(10-1-03)T

**098. Inspection Of Residential Habilitation Records.** The residential habilitation agency and all records required under these rules ~~shall~~ must be accessible at any reasonable time to authorized representatives of the Department for the purpose of inspection with or without prior notice. Refusal to allow such access ~~shall~~ must result in revocation of the residential habilitation agency's certificate. (7-1-95)(10-1-03)T

**109. Agency Provider Training.** The Department ~~shall~~ must assure that direct service providers of all residential habilitation service agencies receive ongoing training in the provision of services and supports to ~~consumers~~ participants. (7-1-95)(10-1-03)T

#### 101. CHANGE OF OWNERSHIP, ADMINISTRATOR OR LESSEE.

**01. Notification To Department.** Because certificates are not transferable from one (1) individual to another or from one (1) lessee to another or from one (1) location to another, when a change of ownership, lease or locations is contemplated, the agency must be recertified and implement the same procedure as an agency that has never been certified. When a change of a certified agency's ownership, administrator, lessee, title, or address occurs, the owner or designee ~~shall~~ must notify the Department in writing. (7-1-95)(10-1-03)T

**02. New Application Required.** A new application must be submitted in the instance of a change of ownership or lessee to the certifying agency at least sixty (60) days prior to the proposed date of change. (7-1-95)

**03. Arms Length Agreement.** Because of the inherently close relationship between the lessee and the lessor, an application for change of ownership of an agency that is being leased from a person who is in litigation for failure to meet certification standards or who has had his certificate revoked, ~~shall~~ must include evidence that there is a bona fide arms length agreement and relationship between the two (2) parties. (7-1-95)(10-1-03)T

#### 102. -- 199. (RESERVED).

#### 200. QUALITY ASSURANCE OUTCOME REVIEW.

**01. Responsibilities.** The certifying agency ~~shall~~ must conduct an outcome-based review on each residential habilitation agency on a routine basis as specified in the service agreement. The outcome-based review ~~shall~~ must include at least the following: (7-1-95)(10-1-03)T

**a.** Review of ~~consumer~~ participant participation and satisfaction in residential habilitation services and identification, planning, and delivery; and (7-1-95)(10-1-03)T

**b.** An overall policy and administrative review and, if necessary, a clinical record review; and (7-1-95)

**c.** Assessment of the extent to which the agency's services meet the needs of the ~~consumer~~ participant as identified on the ~~Individual Support P~~ plan of service, and promote community integration and participation. (7-1-95)(10-1-03)T

#### 201. ADMINISTRATION.

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**01. Scope.** Each residential habilitation agency ~~shall~~ must be organized and administered under one authority. If other than a single owner or partnership, the agency ~~shall~~ must have a governing board which assumes full legal responsibility for the overall conduct of the agency. ~~(7-1-95)~~(10-1-03)T

**02. Structure.** The administrative responsibilities of the agency ~~shall~~ must be documented by means of a current organizational chart. ~~(7-1-95)~~(10-1-03)T

**03. Responsibilities.** The governing authority ~~shall~~ must assume responsibility for: ~~(7-1-95)~~(10-1-03)T

**a.** Adopting appropriate organizational bylaws and policies and procedures; and (7-1-95)

**b.** Appointing an administrator qualified to carry out the agency's overall responsibilities in relation to written policies and procedures and applicable state and federal laws. The administrator ~~shall~~ must participate in deliberation of policy decisions concerning all services; and ~~(7-1-95)~~(10-1-03)T

**c.** Providing a continuing and annual program of overall agency evaluation; and (7-1-95)

**d.** Assuring that appropriate training, space requirements, support services, and equipment for staff or affiliated residential habilitation providers are provided to carry out assigned responsibilities; and (7-1-95)

**e.** Cooperating in participating in a system by which to coordinate with other service providers continuity of the delivery of residential habilitation services in the ~~Individual Support Plan~~ plan of service. ~~(7-1-95)~~(10-1-03)T

### 202. ADMINISTRATOR.

~~As~~ The administrator ~~shall be~~ is responsible and accountable for implementing the policies and procedures approved by the governing authority. ~~(7-1-95)~~(10-1-03)T

**01. Administrator Qualifications.** Each agency ~~shall~~ must have a designated administrator who: ~~(7-1-95)~~(10-1-03)T

**a.** Is at least twenty-one (21) years of age; and (7-1-95)

**b.** Has not been convicted of any felony or fraudulent practices; and (7-1-95)

**c.** Has a minimum of three (3) years of experience in service delivery to persons with developmental disabilities with at least one (1) year having been in an administrative role. (7-1-95)

**02. Absences.** The administrator ~~shall~~ must designate, in writing, a qualified person to perform the functions of the administrator to act in his absence. ~~(7-1-95)~~(10-1-03)T

**03. Responsibilities.** The administrator, or his designee, ~~shall~~ must assume responsibility for: ~~(7-1-95)~~(10-1-03)T

**a.** Developing and implementing written administrative policies and procedures which comply with applicable rules; and (7-1-95)

**b.** Developing and implementing policies and procedures for staff and affiliated residential habilitation provider training, quality assurance, evaluation, and supervision; and (7-1-95)

**c.** Conducting regular staff and affiliated residential habilitation provider meetings to review program and general ~~consumer~~ participant needs and plan appropriate strategies for meeting those needs; and ~~(7-1-95)~~(10-1-03)T

**d.** Maintaining adequate financial accounting records according to government accepted accounting principles; and (7-1-95)

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- e. Making all records available to the Department for review or audit; and (7-1-95)
- f. Developing and implementing a policy addressing safety measures to protect ~~consumers~~ participants, staff, and affiliated residential habilitation providers as mandated by state and federal rules; and ~~(7-1-95)~~(10-1-03)T
- g. Ensuring that agency personnel, and affiliated providers including those providing services under arrangement, practice within the bounds set forth by the applicable state licensure boards. (7-1-95)

### 203. STAFF AND AFFILIATED RESIDENTIAL HABILITATION PROVIDER TRAINING.

Training ~~shall~~ must include orientation and ongoing training at a minimum as required ~~by rules and the waiver document under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 143.~~ Training is to be a part of the orientation training and ~~shall be~~ is required initially prior to accepting ~~consumers~~ participants. All required training must be completed within six (6) months of employment or affiliation with a residential habilitation agency and documented in the employee or affiliated residential habilitation provider record. The agency ~~shall~~ must ensure that all employees, affiliated residential habilitation providers, and contractors receive orientation training in the following areas: ~~(7-1-95)~~(10-1-03)T

- 01. **Rights.** Personal, civil, and human rights. (7-1-95)
- 02. **Disabilities.** Developmental disabilities commensurate with the skills of ~~consumers~~ participants served. ~~(7-1-95)~~(10-1-03)T
- 03. **Understanding Of ~~Consumers'~~ Participants' Needs.** A basic understanding of the needs, desires, goals and objectives of ~~consumers~~ participants served. ~~(7-1-95)~~(10-1-03)T
- 04. **Supervision.** Appropriate methods of supervision. (7-1-95)
- 05. **Review Of Services.** A review of the specific services that the ~~consumer shall~~ participant requires. ~~(7-1-95)~~(10-1-03)T
- 06. **First Aid And CPR.** First aid, CPR, and universal precautions. (7-1-95)

### 204. -- 299. RESERVED.

### 300. POLICY AND PROCEDURE MANUAL.

A policy and procedure manual ~~shall~~ must be developed by the residential habilitation agency for effectively implementing its objectives. It ~~shall~~ must be approved by the governing authority. Policies and procedures ~~shall~~ must be reviewed annually and revised as necessary. The manual ~~shall~~ must, at a minimum, include policies and procedures reflecting the following: ~~(7-1-95)~~(10-1-03)T

- 01. **Scope Of Services And Area Served.** Scope of services offered and geographic area served. (7-1-95)
- 02. **Acceptance Standards.** Standards for acceptance of ~~consumers~~ participants. ~~(7-1-95)~~(10-1-03)T
- 03. **Records Standards.** Standards for clinical records maintained. (7-1-95)
- 04. **Required Services.** Procedures that must be performed by each service. (7-1-95)
- 05. **~~Consumer~~ Participant Safety.** ~~Consumer~~ Participant safety assessment procedures. ~~(7-1-95)~~(10-1-03)T
- 06. **Emergency Care.** Emergency care measures and crisis and emergency planning. (7-1-95)
- 07. **Administrative Records.** Administrative records to be maintained. (7-1-95)



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08. **Personnel.** Personnel qualifications, responsibilities, and job description. (7-1-95)

09. ~~Consumer~~ **Participant Rights.** Personal, civil, and human rights and dissemination of ~~consumer~~ participant rights policies. (7-1-95)(10-1-03)T

### 301. PERSONNEL.

01. **Policies.** The agency is responsible for the recruitment, hiring, training, supervision, scheduling, and payroll for its employees, subcontractors or agents; and training, supervision, and quality assurance for affiliated providers. Written personnel policies ~~shall~~ must be on file and provided to employees and affiliated residential habilitation providers which describe the employee's and affiliated residential habilitation provider's rights, responsibilities, and agency's expectations. (7-1-95)(10-1-03)T

02. **Work Schedules.** Coverage is scheduled to assure compliance with the Individual Support and Implementation Plans and all work schedules ~~shall~~ must be kept in writing. The agency ~~shall~~ must specify provisions and procedures to assure back-up coverage for those work schedules. (7-1-95)(10-1-03)T

03. **Personnel Records.** A record for each employee and affiliated residential habilitation provider ~~shall~~ must be maintained from date of hire or affiliation for not less than one (1) year after the employee or affiliated residential habilitation provider is no longer employed by the agency, and ~~shall~~ must include at least the following: (7-1-95)(10-1-03)T

- a. Name, current address and phone number of the employee; and (7-1-95)
- b. Social Security number; and (7-1-95)
- c. Education and experience; and (7-1-95)
- d. Other qualifications (if licensed in Idaho, the original license number and the date the current registration expires, or if certificated, a copy of the certificate); and (7-1-95)
- e. Date of employment or affiliation; and (7-1-95)
- f. Position in the agency; and (7-1-95)
- g. Date of termination of employment or affiliation and reason for termination, if applicable; and (7-1-95)
- h. Documentation of initial orientation and required training; and (7-1-95)
- i. Evidence of current CPR and First Aid certifications; and (7-1-95)
- j. Verification of completion of ~~the~~ criminal history checks ~~every five (5) years~~ in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and (7-1-95)(10-1-03)T
- k. Evidence that the employee or affiliated residential habilitation provider has received a job description and understands his duties. (7-1-95)

### 302. SERVICE PROVISION PROCEDURES.

01. **Admission Procedures.** The following criteria ~~shall~~ must apply to all ~~consumers~~ participants receiving services from a residential habilitation agency: (7-1-95)(10-1-03)T

- a. Agreement to serve each ~~consumer~~ participant ~~shall~~ must be based on a recommendation of a person-centered planning process conducted by the ~~consumer's Individual Support Plan~~ participant's person-centered planning team, including his ~~targeted~~ service coordinator. (7-1-95)(10-1-03)T

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b. The agency ~~shall~~ must obtain authorization from the Department for reimbursement for each Medicaid-covered eligible waiver service prior to providing residential habilitation services. ~~(7-1-95)~~(10-1-03)T

**02. Implementation Plan.** Each ~~consumer~~ participant ~~shall~~ must have an implementation plan which ~~shall~~ includes goals and objectives specific to his ~~Individual Support Plan~~ plan of service residential habilitation program. ~~(7-1-95)~~(10-1-03)T

**03. Periodic Review.** Review of services and ~~consumer~~ participant satisfaction ~~shall~~ must be conducted at least quarterly or more often if required by the ~~consumer's~~ participant's condition or program. ~~(7-1-95)~~(10-1-03)T

**04. Medication Standards.** The agency ~~shall~~ must maintain a policy describing the program's system for handling ~~consumer~~ participant medications which is in compliance with the IDAPA 23.01.01, "Rules of the Board of Nursing". ~~(7-1-95)~~(10-1-03)T

**05. Provider Status Review.** Residential Habilitation agencies must submit semiannual and annual status reviews reflecting the status of behavioral objectives or services identified on the plan of service to the plan monitor. Semiannual status reviews must remain in participant file and annual status reviews must be attached to annual plan of service. (10-1-03)T

**056. Termination Procedures.** The agency ~~shall~~ must terminate residential habilitation services if, as a result of a person-centered planning process conducted by the ~~Individual Support Plan~~ person-centered planning team, it is demonstrated that the ~~consumer~~ participant is no longer in need of or desires Residential Habilitation services. The agency must notify the client in writing that the termination of services will occur and must develop a transition plan for termination of those services. The ~~consumer~~ participant will be entitled to appeal the termination. The agency may not terminate services when to do so would pose a threat of endangerment to the ~~consumer~~ participant or others. ~~(7-1-95)~~(10-1-03)T

303. -- 399. (RESERVED).

### 400. ~~CONSUMER PARTICIPANT~~ RECORDS.

**01. Participant Records.** Each agency ~~shall~~ must have and maintain a written policy outlining the required content of ~~consumer~~ participant records, criteria for completeness, and methodology to be used to ensure current and accurate records. An individual record ~~shall~~ must be maintained for each ~~consumer~~ participant and retained for a period of three (3) years following the ~~consumer's~~ participant's termination of services. All entries made into a ~~consumer~~ participant record ~~shall~~ must be dated and signed in ink. (10-1-03)T

**02. Required Information.** Records ~~shall~~ must include at least the following information: ~~(7-1-95)~~(10-1-03)T

~~01a.~~ Name, address and current phone number of the ~~consumer~~ participant. ~~(7-1-95)~~(10-1-03)T

~~02b.~~ Social Security and Medicaid ID numbers. (7-1-95)

~~03c.~~ ~~Sex~~ Gender and marital status. ~~(7-1-95)~~(10-1-03)T

~~04d.~~ Date of birth. (7-1-95)

~~05e.~~ ~~Emergency Contacts.~~ Names, addresses, and current phone numbers of family, advocates, friends, and persons to be contacted in case of an emergency. ~~(7-1-95)~~(10-1-03)T

~~06f.~~ Physician, dentist, and other health care providers. (7-1-95)

~~07g.~~ A list of medications, diet, and all other treatments prescribed for the ~~consumer~~ participant. ~~(7-1-95)~~(10-1-03)T

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Residential Habilitation Agencies

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Temporary and Proposed Rulemaking

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- ~~08h.~~ Results of a history and physical when necessary. (7-1-95)
- ~~09i.~~ Results of an age appropriate functional assessment, and person centered plan. (7-1-95)
- ~~10j.~~ Psychosocial information. (7-1-95)
- ~~11k.~~ ~~**Habilitation Program.**~~ Habilitation program, including documentation of planning, continuous evaluation, and ~~consumer participant~~ satisfaction with the program. ~~(7-1-95)~~(10-1-03)T
- ~~12l.~~ Record of significant incidents, accidents, illnesses, and treatments. (7-1-95)
- ~~13m.~~ Daily medication log when applicable. (7-1-95)
- ~~14n.~~ Daily record of the date, time, duration, and type of service provided. (7-1-95)
- ~~15o.~~ ~~**Individual Support Plan.**~~ The ~~Individual Support P~~plan of service including implementation plans maintained by the agency, and data-based progress notes. ~~(7-1-95)~~(10-1-03)T

#### 401. ~~**CONFIDENTIALITY OF RECORDS (RESERVED).**~~

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in IDAPA 16.05.01, "Use and Disclosure of Department Records". All consumer records shall be kept confidential and may be disclosed only with the written permission of the consumer, or the consumer's legal guardian, if one has been appointed or pursuant to Section 66-402, Idaho Code, in the event of any abuse, neglect, or exploitation reports. Any agency employee, affiliated residential habilitation provider or contractor shall report information about suspected abuse, neglect, or exploitation to adult protection workers and law enforcement officials, as required by law pursuant to Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, Ombudsman Program, or the designated state protection and advocacy system for persons with developmental disabilities when applicable.~~ (7-1-95)

#### 402. ~~**CONSUMER PARTICIPANT RIGHTS.**~~

~~01. Responsibilities.~~ Each residential habilitation agency ~~shall~~ must develop and implement a written policy outlining the personal, civil, and human rights of all participants. ~~which shall~~ The policy protects and promotes the rights of each ~~consumer participant and including~~ the following: ~~(7-1-95)~~(10-1-03)T

~~a.~~ Inform each ~~consumer participant~~, or legal guardian, of the ~~consumer's participant's~~ rights and the rules of the agency; ~~and~~ ~~(7-1-95)~~(10-1-03)T

~~b.~~ Allow and encourage individual ~~consumers participants~~ to exercise their rights as ~~consumers participants~~ of the agency, and as citizens of the United States, including the right to file complaints, and the right to due process; ~~and~~ ~~(7-1-95)~~(10-1-03)T

~~c.~~ Inform each ~~consumer participant~~, or legal guardian, of the services to be received, the expected benefits and attendant risks of receiving those services, and of the right to refuse services, and alternative forms of services available; ~~and~~ ~~(7-1-95)~~(10-1-03)T

~~d.~~ Provide each ~~consumer participant~~ with the opportunity for personal privacy and ensure privacy during provision of services; ~~and~~ ~~(7-1-95)~~(10-1-03)T

~~e.~~ Ensure that ~~consumers participants~~ are not compelled to perform services for the agency, its employees, affiliated residential habilitation providers or contractors and ensure that ~~consumers participants~~ who do work for the agency, its employees, affiliated residential habilitation providers or contractors, are compensated for their efforts at prevailing wages and commensurate with their abilities; ~~and~~ ~~(7-1-95)~~(10-1-03)T

~~f.~~ Ensure that ~~consumers participants~~ have access to telephones, if living in a place other than their own home or the home of their family, with privacy for incoming and outgoing local and long distance calls except as contraindicated by factors identified within their ~~Individual Support P~~plans of service; and ~~(7-1-95)~~(10-1-03)T

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Residential Habilitation Agencies

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g. Ensure ~~consumers~~ that participants have the opportunity to participate in social, religious, and community group activities. ~~(7-1-95)~~(10-1-03)T

#### 403. ~~CONSUMER PARTICIPANT FINANCES.~~

When the residential habilitation agency or its employees, affiliated residential habilitation providers or contractors are designated as the payee on behalf of the ~~consumers~~ participants, the agency ~~shall~~ must establish and maintain an accounting system that: ~~(7-1-95)~~(10-1-03)T

01. ~~Consumer's Participant's Personal Finance Records.~~ Assures a full and complete accounting of ~~consumers'~~ participants' personal funds entrusted to the agency, or its employees, affiliated residential habilitation providers or contractors on behalf of ~~consumers~~ participants. Records of financial transactions ~~shall~~ must be sufficient to allow a thorough audit of the ~~consumer's~~ participant's funds. ~~(7-1-95)~~(10-1-03)T

02. ~~No Commingling Of Funds.~~ Precludes any commingling of ~~consumer~~ participant funds with agency funds. ~~(7-1-95)~~(10-1-03)T

03. ~~Availability Of Funds.~~ Ensures that the ~~consumer's~~ participant's financial records ~~shall~~ must be available on request to the ~~consumer~~ participant, ~~consumer's~~ participant's legal guardian or advocate. ~~(7-1-95)~~(10-1-03)T

#### 404. ~~COMMUNICATION WITH CONSUMERS PARTICIPANTS, PARENTS, LEGAL GUARDIANS AND OTHERS.~~

The residential habilitation agency ~~shall~~ must promote participation of ~~consumers~~ participants, legal guardians, relatives and friends in the process of providing services to a ~~consumer~~ participant unless their participation is unobtainable or inappropriate as prescribed by the ~~Individual Support P~~plan of service; and ~~(7-1-95)~~(10-1-03)T

01. ~~Reciprocal Communication.~~ Answer communications from ~~consumers'~~ participant's families and friends promptly and appropriately; and ~~(7-1-95)~~(10-1-03)T

02. ~~Promotion Of Visits And Activities.~~ Promote frequent and informal opportunities for visits, trips or vacations; and (7-1-95)

03. ~~Notification Of Guardian Of Consumer's Participant's Condition.~~ Notify promptly the ~~consumer's~~ participant's legal guardian, if one exists, of any significant incidents, or changes in ~~consumer's~~ participant's condition including serious illness, accident, death, or abuse. ~~(7-1-95)~~(10-1-03)T

#### 405. ~~TREATMENT OF CONSUMERS PARTICIPANTS.~~

The residential habilitation agency ~~shall~~ must develop and implement written policies and procedures including definitions that prohibit mistreatment, neglect or abuse of the ~~consumer~~ participant to include at least the following: ~~(7-1-95)~~(10-1-03)T

01. ~~Interventions.~~ Positive behavior interventions ~~shall~~ must be used prior to and in conjunction with, the implementation of any restrictive intervention. ~~(7-1-95)~~(10-1-03)T

02. ~~No Abuse.~~ Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not use physical, verbal, sexual, or psychological abuse or punishment. ~~(7-1-95)~~(10-1-03)T

03. ~~No Punishment.~~ Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not withhold food or hydration that contributes to a nutritionally adequate diet. ~~(7-1-95)~~(10-1-03)T

04. ~~Reporting Violations.~~ ~~All allegations of mistreatment, neglect or abuse, as well as injuries of unknown origin, shall be reported immediately to the administrator and to other officials in accordance with state law through established procedures.~~ Any agency employee, affiliated residential habilitation provider or contractor must report immediately report all allegations of mistreatment, abuse, neglect, injuries of unknown origin, or exploitation to the administrator and to adult protection workers and law enforcement officials, as required by law under Section 39-5202, Idaho Code, or to the Idaho Commission on Aging, IDAPA 15.01.03, "Rules Governing

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Ombudsman for the Elderly Program,” or the designated state protection and advocacy system for persons with developmental disabilities when applicable. (7-1-95)(10-1-03)T

**05. Providing Evidence Of Violation.** Agencies ~~shall~~ must provide evidence that all alleged violations are thoroughly investigated and ~~shall~~ must protect the ~~consumer~~ participant from the possibility of abuse while the investigation is in progress. (7-1-95)(10-1-03)T

**06. Reporting Results Of Investigations.** Results of all investigations ~~shall~~ must be reported to the administrator or designee and to other officials in accordance with state law, and, if the alleged violation is verified, appropriate corrective action ~~is~~ must be taken. (7-1-95)(10-1-03)T

**07. Proper Treatment Of ~~Consumers~~ Participants.** ~~Consumers shall~~ Participants must be treated with dignity and respect and their personal choices and preferences are respected and honored whenever possible and consistent with their well being and their ~~Individual Support P~~ plan of service. (7-1-95)(10-1-03)T

**08. Use Of Restraint On ~~Consumers~~ Participants.** No restraints, other than physical restraint in an emergency, ~~shall~~ must be used on ~~consumers~~ participants prior to the use of positive behavior interventions. The following requirements apply to the use of restraint on ~~consumers~~ participants: (7-1-95)(10-1-03)T

a. Chemical restraint. Employees, affiliated residential habilitation providers or contractors of the agency ~~shall~~ must not use chemical restraint unless authorized by an attending physician. (7-1-95)(10-1-03)T

b. Mechanical restraint. (7-1-95)

i. Mechanical restraint may be used for medical purposes when authorized by an attending physician. (7-1-95)

ii. Mechanical restraint for non-medical purposes may be used only when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator, his team, and a QMRP or a behavior consultant/crisis management provider as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

c. Physical restraint. (7-1-95)

i. Physical restraint may be used in an isolated emergency to prevent injury to the ~~consumer~~ participant or others and ~~shall~~ must be documented in the ~~consumer's~~ participant's record. (7-1-95)(10-1-03)T

ii. Physical restraint may be used in a non-emergency setting when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator, his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

d. Seclusionary Time Out. Seclusionary time out may be used only when a written behavior change plan is developed by the ~~consumer~~ participant, his ~~targeted~~ service coordinator his team, and a QMRP or a behavior consultant/crisis management consultant as qualified in IDAPA 16.03.09.143, “Rules Governing the Medical Assistance Program”. Informed ~~consumer~~ participant consent is required. (7-1-95)(10-1-03)T

406. -- 499. (RESERVED).

### 500. WAIVERS.

~~Pursuant to~~ Under Section 39-2404, Idaho Code, waivers to these rules, may be granted by the Department as necessary provided that granting the waiver does not endanger the health or safety or rights of any ~~consumer~~ participant. The decision to grant a waiver ~~shall~~ must not be considered as precedent or be given any force or effect in any other proceeding. Said waiver may be renewed annually if sufficient written justification is presented to the Department. (7-1-95)(10-1-03)T

501. -- 999. (RESERVED).

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.01 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF DEPARTMENT RECORDS**

##### **DOCKET NO. 16-0501-0301 - (CHAPTER REPEAL)**

##### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted with no changes to the temporary and the proposed docket(s). The original text of the temporary docket was published in the April 2, 2003 Administrative Bulletin, Volume 03-04, page 14. The original text of the proposed docket was published in the October 1, 2003 Administrative Bulletin, Volume 03-10, page 303.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jeanne Goodenough, Division Chief, Office of the Attorney general, at (208) 334-5537.

DATED this 30th day of October, 2003.

Sherri Kovach, Program Supervisor  
Administrative Procedures Section  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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**THIS CHAPTER IS REPEALED IN ITS ENTIRETY.**

#### **IDAPA 16, TITLE 05, CHAPTER 01**

#### **RULES GOVERNING THE PROTECTION AND DISCLOSURE OF DEPARTMENT RECORDS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, page 303.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.01 - RULES GOVERNING THE PROTECTION AND DISCLOSURE OF DEPARTMENT RECORDS**

##### **DOCKET NO. 16-0501-0301 - (CHAPTER REPEAL)**

##### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This chapter of rules is being repealed and re-written in order to comply with the Health Insurance Portability and Accountability Act (HIPAA). The re-write of this Chapter can be found in Docket Number 16-0501-0302 immediately following this notice and the chapter is renamed IDAPA 16.05.01, "Use and Disclosure of Department Records".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this repeal of rule is necessary to comply with deadlines in amendments to governing laws and federal programs.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Jeanne Goodenough, Division Chief, Office of the Attorney General, at (208) 334-5537.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 30th day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
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**IDAPA 16.05.01 IS BEING REPEALED IN ITS ENTIRETY.**

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS**

##### **DOCKET NO. 16-0501-0302 - (CHAPTER REWRITE)**

##### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, Idaho Code.

**DESCRIPTIVE SUMMARY:** The pending rules are being adopted with no changes to the temporary and the proposed dockets. The original text of the temporary docket was published in the April 2, 2003 Administrative Bulletin, Volume 03-04, pages 15 through 28. The original text of the proposed docket was published in the October 1, 2003 Administrative Bulletin, Volume 03-10, pages 309 through 323.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Jeanne Goodenough, Division Chief, Office of the Attorney General, at (208) 334-5537.

DATED this 30th day of October, 2003.

Sherri Kovach, Program Supervisor  
Administrative Procedures Section  
DHW – Administrative Procedures Section  
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Boise, Idaho 83720-0036  
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### **IDAPA 16, TITLE 05, CHAPTER 01**

#### **USE AND DISCLOSURE OF DEPARTMENT RECORDS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 309 through 323.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**



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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS**

##### **DOCKET NO. 16-0501-0302 - (CHAPTER REWRITE)**

##### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 39-242, 39-5403, 56-221, 56-1003, and 56-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This chapter was published on April 2, 2003 as Temporary with the effective date of April 14, 2003. This proposed rule has revisions based on comments from training sessions and further review by staff since being published as temporary. This chapter of rules has been rewritten in order to comply with the Health Insurance Portability and Accountability Act (HIPAA). This chapter is renamed IDAPA 16.05.01, "Use and Disclosure of Department Records". The rewrite of rules conforms to the needed changes within HIPAA and clarifies and simplifies the current rules pertaining to Department confidentiality of records. They establish clear guidelines for the use and disclosure of protected health information, and grant certain rights to individuals relating to their health information. The new rule provides one simplified set of rules for the entire Department.

In April 2003, the Board of Health and Welfare adopted this rule as a temporary rule with an effective date of April 14, 2003. The temporary rule was published in the Idaho Administrative Bulletin, Volume 03-4, April 2, 2003, pages 15 through 28. With this publication the Department is initiating proposed rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this new chapter of rule is necessary to comply with deadlines in amendments to governing laws and federal programs.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Jeanne Goodenough, Division Chief, Office of the Attorney General at (208) 334-5537.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 22, 2003.

DATED this 13th day of August, 2003.

Sherri Kovach  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0501-0302**

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Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.  
The temporary effective date is April 14, 2003.

The original text of the Temporary Rule was published in the Idaho Administrative  
Bulletin, Volume 03-4, April 2, 2003, pages 15 through 28.

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0501-0302

#### **IDAPA 16** **TITLE 05** **CHAPTER 01**

#### **16.05.01 - USE AND DISCLOSURE OF DEPARTMENT RECORDS**

##### **000. LEGAL AUTHORITY.**

The Idaho Department of Health and Welfare and the Board of Health and Welfare have authority to promulgate rules governing the use and disclosure of Department records, according to Sections 39-242, 39-5403, 56-221, 56-222, 56-1003, and 56-1004, Idaho Code. ( )

##### **001. TITLE AND SCOPE.**

**01. Title.** The title of this chapter is IDAPA 16.05.01, "Use and Disclosure of Department Records". ( )

**02. Scope.** These rules govern the use and disclosure of information maintained by the Department, in compliance with applicable state and federal laws, and federal regulations. ( )

**a.** These rules apply to all Department employees, contractors, providers of services, and other individuals or entities who request or use that information. ( )

**b.** These rules apply to all use and disclosure information, regardless of the form in which it is retained or disclosed. ( )

**c.** All individuals and entities must comply with any standards in state or federal law or regulation that contain additional requirements, or are more restrictive than the requirements of these rules. ( )

##### **002. WRITTEN INTERPRETATIONS.**

There are no written interpretations of these rules. ( )

##### **003. ADMINISTRATIVE APPEAL.**

There is no provision for administrative appeal before the Department under the scope of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." To file a district court appeal, to file a complaint or to request a reconsideration to access health information, see Section 007 of these rules. ( )

##### **004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference in this chapter. ( )

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**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except state holidays. ( )

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. ( )

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ( )

**05. Internet Website.** The Department's internet website is found at <http://www2.state.id.us/dhw/>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE AND REQUESTS.**

Individuals have a right to review and copy records maintained by the Department, subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code, these rules, and state and federal laws that make records confidential. The Department's Administrative Procedures Section (APS) and designated custodians in Department offices receive and respond to public records requests. APS can be reached at the mailing address for the Department's business office. Non-identifying or non-confidential information provided to the public by the Department in the ordinary course of business is not required to be reviewed by a public records custodian. Original records must not be removed from the Department by individuals who make public records requests. ( )

**007. DISTRICT COURT APPEALS, COMPLAINTS AND REQUESTS FOR RECONSIDERATION.**

The confidentiality of health information is defined in part by the Health Insurance Portability and Accountability Act (HIPAA), Sections 262 and 264 of Public Law 104-191, 42 USC 1320d, 110 Statutes at Large 2033-4, and 45 CFR Sections 160 and 164. ( )

**01. Appeals To District Court.** Anyone who is aggrieved by a denial of disclosure or amendment of a public record may file an appeal in the appropriate district court in compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**02. Complaints To Privacy Officer.** Individuals who are dissatisfied with a Department decision regarding confidential information may file a written complaint with the Department's Privacy Officer. Complaints must be submitted to the Department's Privacy Officer at the mailing address for the Department's business office. The Privacy Officer determines if a complaint is valid and makes a recommendation for its resolution to the Department within twenty-eight (28) days after the complaint is received. ( )

**a.** Secretary of Health and Human Services (HHS). Complaints that involve the use and disclosure of health information may also be submitted to the Secretary of Health and Human Services at the following address: The U.S. Department of Health and Human Services, 200 Independence Avenue, S.W., Washington, DC 20201. ( )

**b.** Time for filing complaints. Complaints must be filed within one hundred eighty (180) days from the date of the alleged violation. ( )

**03. Request For Reconsideration To Access Health Information.** The individual or legal representative may submit a written request for reconsideration to the Privacy Officer if access to health information is denied. ( )

**a.** The request for reconsideration must be postmarked no later than twenty-eight (28) days after notice of the denial was mailed. ( )

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Use and Disclosure of Department Records****Docket No. 16-0501-0302**  
**Proposed Rulemaking**

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**b.** The reconsideration will be conducted by another licensed health care professional who did not participate in the original decision. ( )

**c.** The Department will notify the individual of the outcome of the review within twenty-eight (28) days after the request is received. ( )

**008. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Authorization.** A time-limited written consent for the disclosure of confidential information to a specific individual or entity outside the Department, and outside of normal business processes for providing Department services. ( )

**02. Confidential Information.** Information that may only be used or disclosed as provided by state or federal law, federal regulation, or state rule. ( )

**03. Consent.** Permission to use or disclose confidential information. Consent may be inferred from the circumstances. ( )

**04. Department.** The Idaho Department of Health and Welfare. ( )

**05. Guardian Ad Litem.** The person appointed by the court, according to law, to protect the interest of a minor or an incompetent in a case before the court. ( )

**06. Health Information.** Identifying information about the past, present or future: ( )

**a.** Physical or mental health or condition of an individual; ( )

**b.** Provision of health care to an individual; or ( )

**c.** Payment for health care for an individual. ( )

**07. Identifying Information.** The name, address, social security number, or other information by which an individual could be identified. Information may also be identifying without a name, based on the context or circumstances of a disclosure. ( )

**08. Informal Representative.** A person who is not a legal representative, but who is a relative, friend, or other person permitted to communicate with the Department on behalf of an individual. The individual or legal representative may give such permission verbally, in writing, or through his conduct. ( )

**09. Legal Representative.** The parent of a minor, a guardian, conservator, attorney, or an individual who has an appropriate power of attorney. ( )

**10. Minimally Necessary.** The information that is essential to provide benefits or services, and to perform normal business processes of the Department. ( )

**11. Need-To-Know.** Confidential information that is necessary to provide benefits or services, and to perform normal business processes of the Department. ( )

**12. Psychotherapy Notes.** Notes recorded in any format by a mental health professional that documents or analyzes the content of individual or group counseling sessions, and that are separated from the rest of the individual's medical record. The term "psychotherapy notes" excludes: ( )

**a.** Medication prescription and monitoring; ( )

**b.** Counseling session start and stop times; ( )

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- c. Types and frequencies of treatment furnished; ( )
- d. Results of clinical tests; and ( )
- e. Any summary of diagnosis, functional status, the treatment plan, symptoms, prognosis and progress to date. ( )

### **011. DEFINITIONS FOR VITAL STATISTICS.**

The definitions provided in Subsection 011 of these rules apply to Vital Statistics and to the disclosure provisions of Section 39-270, Idaho Code. ( )

**01. Authorized Representative.** An attorney, physician, funeral director, a legally designated agent, or an entity whose purpose for obtaining a vital record is to pay direct benefits to a person with a direct and tangible interest defined in Subsection 011.03 of this rule. ( )

**02. Certificate.** A certificate of birth, death, stillbirth, marriage, or divorce, filed pursuant to law, excluding information contained in the statistical section of any record. ( )

**03. Individuals With A Direct And Tangible Interest.** Individuals who have a direct and tangible interest in a vital record are: ( )

a. The registrant and that person's spouse, children, parents, grandparents, grandchildren, siblings, or guardian; ( )

b. A person who is conducting genealogical research on the person's own family; ( )

c. Any other person who demonstrates that the record is needed for the determination or protection of that person's property right; ( )

d. An authorized representative of any of these individuals; ( )

e. The surviving next-of-kin if a deceased registrant has no other surviving family member listed in this subsection; ( )

f. The Idaho Attorney General, and state and federal prosecuting attorneys, if such attorney submits an affidavit affirming that the record is necessary in the furtherance of the attorney's official law enforcement duties, is not reasonably available from another source, and that reasonable steps will be taken to preserve the confidentiality of the record; and ( )

g. Any person, upon the order of an Idaho court of competent jurisdiction, where the court finds that disclosure of the record is necessary in the interests of justice. ( )

**04. Parent.** Does not include a biological parent whose parental rights have been terminated. ( )

**05. Public Health.** The science and art of: ( )

a. Preventing disease, prolonging life, or promoting health and efficiency through organized community effort for the sanitation of the environment; ( )

b. The control of communicable infections; ( )

c. The education of the individual in personal hygiene; ( )

d. The organization of medical and nursing services for the early diagnosis and preventive treatment of disease; and ( )

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**e.** The development of the social machinery to ensure everyone a standard of living adequate for the maintenance of health, so organizing these benefits as to enable every citizen to realize his birthright of health and longevity. ( )

**06. Putative Father.** The biological father of a child as identified by himself, the natural mother, an adoption agency, or a court. ( )

**07. Registrar.** The state Registrar as defined in Section 39-241(r), Idaho Code. The mailing and street address for the state Registrar is Bureau of Vital Records and Health Statistics, 450 W. State St., 1st Floor, PO Box 83720, Boise, Idaho 83720-0036. ( )

**08. Research.** Organized scientific inquiry or examination of data in order to discover and interpret facts. ( )

**09. Statistical Purposes.** The collection, analysis, interpretation and presentation of masses of non-identifying numerical information. ( )

**012. -- 049. (RESERVED).**

### GENERAL CONSENT AND DISCLOSURE REQUIREMENTS (Sections 050 through 199)

#### **050. CONSENT TO GATHER, USE AND DISCLOSE INFORMATION.**

When individuals, legal representatives or informal representatives sign an application, they consent for the Department to gather, use and disclose information as needed for an individual to receive Department benefits or services. If none of these individuals provides a consent on an application, service may be denied. An informal representative may only consent to the disclosure of confidential information when permitted by these rules. ( )

#### **051. AUTHORIZATION FOR THE USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.**

An authorization for the use and disclosure of health and other confidential information must be in writing, and identify the individual who is the subject of the record. ( )

**01. Content Of Authorization.** An authorization must be dated and signed by the individual or legal representative, and: ( )

**a.** Identify the specific information involved; ( )

**b.** State the duration of the authorization, defined by a specific date or the description of an event; ( )

**c.** Identify the recipient of the information; ( )

**d.** State the purpose for the authorization; ( )

**e.** Specify any restrictions on use or disclosure of the information; and ( )

**f.** Provide for revocation of the authorization. ( )

**02. Defective Authorization.** An authorization must not be acted upon if the authorization has expired or has been revoked, or if any essential information is omitted or is false. ( )

**03. Psychotherapy Notes.** Psychotherapy notes that are separate from the rest of an individual's record may not be used or disclosed without an authorization except to the originator of the notes for treatment or to defend the Department in a legal action brought by the individual. ( )

**04. Revocation Of An Authorization.** An individual or legal representative may revoke an

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authorization at any time by submitting a written request at any Department office. ( )

**05. Effect On Benefits And Services.** An individual's refusal to provide an authorization does not affect the receipt of benefits or services the individual would otherwise receive. ( )

**06. Copy Of Authorization.** The Department will provide a copy of the signed authorization to the individual or legal representative. ( )

**052. -- 074. (RESERVED).**

**075. USE AND DISCLOSURE OF CONFIDENTIAL INFORMATION.**

Without a consent or an authorization, no one may use or disclose health or other confidential information except as provided in Section 100 of this chapter. With a consent or an authorization, confidential information will be used or disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the Department's business and the provision of benefits or services, subject to law and the exceptions listed in these rules. Recipients of information must protect against unauthorized disclosure or use of the information for purposes that are not specified in a consent or an authorization. Access to an individual's own records is governed by Section 125 of this chapter. Specific consent and disclosure requirements are identified in Sections 200 through 283 of these rules. ( )

**01. Identity.** Any individual who requests to review, copy, restrict or amend confidential information, or to sign an authorization, must provide verification of identity, and where appropriate, present proof that the individual is a legal representative of the subject of the record. Except for verifications or requests for certified copies of vital records, requests submitted by mail must be notarized if necessary to identify the individual's signature. ( )

**02. Order Of Court Or Hearing Officer.** If information is subpoenaed in a civil, criminal or administrative action, the Department will provide such information as would be disclosed with a public records request, without an order from the court or hearing officer. Alternatively, the Department may submit the record with a request for a review solely by the judge or hearing officer, and an order appropriately limiting its use by the parties. If Department staff have reason to believe that release of a record through a public records request may be detrimental to any individual, the Department may seek a protective order. ( )

**03. Referent.** Unless the individual is a witness in litigation, identifying information must not be disclosed about an individual who reported concerns relating to any Department function, including: ( )

**a.** Fraud; ( )

**b.** Abuse, neglect or abandonment of a child; ( )

**c.** Abuse, neglect or abandonment of a vulnerable adult; and ( )

**d.** Concerns about the mental health of another. ( )

**04. Collateral Contact.** Identifying information must not be disclosed about individuals who are not the subject of the record and who provide information to the Department in the ordinary course of business. ( )

**05. Alternative Communication.** The Department, contractors and providers must comply with an individual's request that confidential information be communicated by alternative means of delivery unless it is administratively difficult to do so or the request is unreasonable. If approved, all information from a Department program will use the same alternative means of delivery after the request is received and recorded. ( )

**06. Restriction On Disclosure Of Health Information.** ( )

**a.** An individual may request in writing that use or disclosure of health information be restricted. The Department will respond in writing, and may deny the request if: ( )

**i.** Disclosure is required; ( )

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- ii. Necessary for the safety of the individual or others; ( )
- iii. Necessary for the provision of services, benefits or payment; or ( )
- iv. The restriction is unreasonable. ( )

**b.** The uses and disclosures of confidential information are subject to a restriction after it is received and recorded by the Department. Department employees, contractors, and the individual may request the Department to terminate the restriction. The Department will notify the individual of its response to a request to terminate a restriction. ( )

**07. Discovery.** Records will be provided only in response to valid discovery in any federal or state criminal, civil or administrative proceeding, as required by the Public Records Act, Section 9-343(3), Idaho Code. ( )

**08. "Do Not Re-Release" Records.** If the Department receives health information that is marked "Do not re-release," that information will not be disclosed except to the subject of the record or legal representative, if allowed by these rules or applicable law. ( )

**076. -- 099. (RESERVED).**

### **100. EXCEPTIONS TO REQUIREMENT FOR AUTHORIZATION.**

Confidential information will be released without an authorization to individuals and entities in compliance with a court order, or if they are legally authorized to receive it. The following are exceptions to the requirement for an authorization: ( )

**01. Advocates And Guardians.** Federally-recognized protection and advocacy agencies or duly appointed guardians ad litem have access to an individual's file as necessary to perform their legal functions. Guardians ad litem have access to records as provided in Section 16-1623, Idaho Code, except for: ( )

**a.** Drug abuse and sickle cell anemia records maintained by the Veteran's Administration (VA), as required by 38 USC Section 7332; ( )

**b.** Claims under laws administered by the VA as required by 38 USC Section 3301; and ( )

**c.** Drug abuse prevention programs that receive federal assistance, as required by 42 USC Section 290ee - 3. ( )

**02. Police Functions.** Police officers and sheriffs are entitled to receive confidential information for the purpose of conducting an investigation, or to determine whether to place an individual in protective custody, subject to limitations regarding substance abuse treatment. ( )

**03. Fugitives And Missing Persons.** ( )

**a.** A state or local law enforcement officer may receive the current address of any cash assistance recipient who is a fugitive felon, in compliance with Section 56-221, Idaho Code. ( )

**b.** The following health information may be disclosed to a law enforcement officer for the purpose of identifying or locating a suspect, fugitive, material witness or missing person: ( )

- i. Name and address; ( )
- ii. Date and place of birth; ( )
- iii. Social security number; ( )



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- iv. Blood type and rh factor; ( )
- v. Type of injury; ( )
- vi. Date and time of treatment or death, if applicable; and ( )
- vii. Distinguishing physical characteristics. ( )
- c. DNA, dental records, or typing, samples or analysis of body fluids or tissue must not be disclosed. ( )

**04. Duty To Warn Or Report.** Confidential information may be released without an authorization if necessary under a legal duty to warn or to report. ( )

**05. Department Business, Monitoring And Legal Functions.** Department employees and contractors may use and disclose records as necessary to perform normal business functions, including health treatment, audit and quality improvement, investigation of fraud and abuse, establishment of overpayments and recoupment, public health, or other functions authorized by law. Information will be made available to state and federal auditors and compliance monitors. Confidential information will be provided to counsel as needed to evaluate, prepare for and represent the Department in legal actions. ( )

**06. Emergencies.** Confidential information may be disclosed to qualified medical personnel to the extent necessary to respond to a medical emergency that requires immediate attention. ( )

**07. Multidisciplinary Staffing.** Confidential information may be disclosed to employees of the Department, law enforcement, and other appropriate individuals to participate in a multidisciplinary team evaluation of child protection cases under Section 16-1609A, Idaho Code, or interdisciplinary Department staffing of services for an individual. All individuals who participate in such staffing must not redisclose the information and must comply with any other pertinent statute, rule or regulation. ( )

**08. Collaborative Staffing.** Confidential information may be disclosed in staffing by the Department and other individuals or entities if all participants are involved with the same or similar populations and have an equal obligation or promise to maintain confidentiality. Disclosure of information in inter-agency staffing must be necessary to coordinate benefits or services, or to improve administration and management of the services. Confidential information may be disclosed only on a need-to-know basis and to the extent minimally necessary for the conduct of the staffing. All individuals who participate in such staffing must not redisclose the information except in compliance with any other pertinent statute, rule or regulation. ( )

**09. Elected State Official.** As provided by Section 16-1623(f), Idaho Code, any duly elected state official carrying out his official functions may have access to child protection records of the Department, and must not redisclose the information. ( )

**10. Child Protection Agency.** A legally mandated child protection agency may provide information necessary to investigate a report of known or suspected child abuse or neglect, or to treat a child and family who are the subjects of the record. ( )

**11. Legally Authorized Agency.** An agency will be provided appropriate information if the agency is legally responsible for or authorized to care for, treat or supervise a child who is the subject of the record. ( )

**12. Informal Representatives.** Informal representatives may be permitted to receive and deliver information on behalf of an individual, and may be given health information if the informal representative is directly involved with the individual's care. Confidential information may be withheld in whole or part if professional staff determines that disclosure is not in the best interest of the individual, based on the circumstances and their professional judgement. The Department will not disclose information that is prohibited from being disclosed by these rules or any other legal requirement. ( )

### **101. ABUSE, NEGLECT, OR DOMESTIC VIOLENCE.**

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Health information may be disclosed to a law enforcement officer if the victim of abuse, neglect, or domestic violence agrees to the disclosure. ( )

**01. Incapacity Of Victim.** If the victim is unable to agree because of incapacity, health information will be disclosed if the officer states: ( )

**a.** That the information is not intended to be used against the victim; and ( )

**b.** That immediate enforcement activity would be materially and adversely affected by waiting for the victim's agreement. ( )

**02. Judgement Of Professional Staff.** The victim must be promptly informed that a report to law enforcement has been or will be made unless in the judgement of professional staff: ( )

**a.** Informing the victim would place him at risk of serious harm; or ( )

**b.** The probable perpetrator of the abuse, neglect or domestic violence would be the recipient of the report, and disclosure would not be in the victim's best interest. ( )

**102. VICTIM OF OTHER CRIME.**

Health information may be disclosed in response to a law enforcement official's request about a victim or suspected victim of a crime other than those listed in Section 101 of these rules, if the individual agrees to the disclosure. ( )

**01. Incapacity Of Victim Or Emergency Circumstance.** If the individual is unable to agree because of incapacity or emergency circumstance, health information will be disclosed if the official states that the information is needed to determine whether a violation of law has occurred, and that it is not intended to be used against the individual. ( )

**02. Best Interest Of The Individual.** The officer must also represent that immediate enforcement activity would be materially and adversely affected by waiting for the individual's agreement. Professional staff must agree that disclosure is in the best interest of the individual. ( )

**103. SERIOUS THREAT TO HEALTH OR SAFETY.**

Subject to the restrictions in this rule, health information may be used or disclosed if necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public. Disclosure must be based on actual knowledge or credible information from a person with apparent knowledge or authority. Disclosure will be made only to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat. ( )

**01. Apprehension By Law Enforcement.** Health information may be disclosed as necessary to law enforcement to identify or apprehend an individual. Disclosure is limited to an admission that an individual participated in a violent crime if it is reasonable to believe that serious physical harm has been caused to the victim. ( )

**02. Escape From Law Enforcement.** Health information may be disclosed as necessary for law enforcement to identify or apprehend an individual where it appears from all the circumstances that the individual has escaped from a correctional institution or lawful custody. ( )

**03. Prohibition On Disclosure.** Disclosure of an admission of participation in a violent crime is prohibited if the information is learned in the course of treatment to affect the individual's tendency to commit the criminal conduct, or through a request by the individual to initiate such treatment. ( )

**104. REPORTING OF CRIME ON PREMISES.**

Health information may be disclosed to a law enforcement official if the information constitutes evidence of criminal conduct that occurred on the Department's premises. ( )

**105. REPORTING CRIME IN EMERGENCIES.**

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If a Department employee is providing emergency health care off the Department's premises, health information may be disclosed if necessary to alert law enforcement to a crime; the location of the crime or victim; and the identity, description and location of the perpetrator. If the crime involves abuse, neglect or domestic violence, the requirements of Section 101 of this chapter apply. ( )

**106. -- 124. (RESERVED).**

**125. ACCESS TO AN INDIVIDUAL'S OWN RECORD.**

An individual who is at least fourteen (14) years old, or a legal representative, may review and obtain a copy of Department records that pertain to the individual, subject to the exceptions listed in Subsections 125.01 through 125.04 of these rules. Requests must be in writing, identifying the individual whose record is sought, and the record or information requested. The principles of disclosing only minimally necessary information on a need-to-know basis do not apply to a request for an individual's own records. The following information must not be disclosed: ( )

**01. Children's Mental Health.** Records of a child's mental health services must not be disclosed to the child when a physician or other mental health professional has noted that disclosure would be damaging to the child, unless access is ordered by a court according to Section 16-2428, Idaho Code. ( )

**02. Legal Action.** No disclosure will be made to an individual of information compiled in an ongoing investigation, that is exempt from disclosure, or that relates to adoption. Information compiled in reasonable anticipation of litigation that is not otherwise discoverable must not be disclosed. Information compiled for use in a civil, criminal, or administrative proceeding to which the individual is a party must not be disclosed except in compliance with valid discovery. ( )

**03. Clinical Laboratories.** There will be no disclosure of information maintained by a clinical laboratory except as authorized by the provider who ordered the test or study. ( )

**04. Confidential Information.** Health and other confidential information will not be disclosed to the individual if a licensed professional in an appropriate discipline determines that disclosure is likely to endanger the life or physical safety of the individual or another person. Disclosure to a legal representative will be denied if there is a professional determination that access by the representative is likely to cause substantial harm to the subject of the record or another person. ( )

**126. -- 149. (RESERVED).**

**150. AMENDMENT OF RECORD.**

Unless otherwise provided by law, individuals may request in writing to amend the content of a record created by the Department. The Department will respond in writing within ten (10) days, granting or denying the amendment. A record created by a third party will not be amended by the Department. ( )

**01. Amendment Of Health Information.** Once an amendment regarding health information is approved and recorded, the Department will provide the amended health information when the record is disclosed in the future. If an amendment of health information is denied, the individual may provide a written response, which the Department may rebut in writing to the individual. Upon request, documentation of all the records involved in the denial will be provided whenever that information is disclosed in the future. ( )

**02. Updating Identifying Information.** Name and address changes, and similar updates of information in Department files will be made without using the amendment process. ( )

**151. -- 174. (RESERVED).**

**175. REPORT OF DISCLOSURES OF HEALTH INFORMATION.**

**01. Documented Disclosures.** The following disclosures of identifying health information for a purpose other than providing health treatment, payment or operations will be documented: ( )

**a.** Required by law; ( )

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- b. Public health activities; ( )
- c. Related to victims of abuse, neglect or domestic violence; ( )
- d. Health care oversight; ( )
- e. Judicial and administrative proceedings; ( )
- f. Correctional institutions or custodial law enforcement situations; ( )
- g. Coroners, medical examiners, and funeral directors; ( )
- h. Organ or tissue donations; ( )
- i. Research; ( )
- j. To avert a serious threat of health and safety; and ( )
- k. Specialized government functions such as national security or intelligence. ( )

**02. Documentation Of Disclosure.** Documentation will identify when the disclosure occurred, to whom, what information was disclosed and for what purpose. ( )

**03. Maintenance Of Documentation.** The Department maintains documentation of these disclosures of health information for six (6) years. ( )

**04. Request For Report Of Disclosures.** An individual or legal representative may receive one (1) free report of disclosures per calendar year for six (6) years beginning April 14, 2003. Additional requests for a report of disclosures are processed as public record requests, and may be subject to fees. ( )

**05. Pending Investigation.** The Department must suspend reporting of a disclosure of health information at the request of any federal, state or local entity that is conducting an investigation related to the oversight of health care, illegal discrimination, licensing, certification or accreditation. If the request is verbal, the suspension will terminate after thirty (30) days unless the request is renewed in writing. ( )

**176. -- 189. (RESERVED).**

### **190. RECORDS OF DECEDENTS.**

Records of decedents are confidential for as long as the Department maintains the records, except as needed by coroners or medical examiners, funeral directors, and law enforcement if there is suspicion that the death was the result of criminal conduct. While records are maintained, the same confidentiality requirements apply to the personal representative of the estate or other legal representative of the deceased individual. ( )

### **191. DATA FOR RESEARCH OR OTHER PURPOSES.**

Records that contain non-identifying information may be disclosed for Department approved research or other purposes without a written authorization. ( )

**192. -- 199. (RESERVED).**

## **SPECIFIC CONSENT AND DISCLOSURE REQUIREMENTS** **(Sections 200 through 283)**

### **200. ABORTION FOR MINORS.**

Consent for an abortion for a minor is governed by Section 18-609A, Idaho Code. ( )

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**201. ABUSE, NEGLECT OR DOMESTIC VIOLENCE.**

Abuse, abandonment or neglect of a minor is required to be reported in compliance with Section 16-1619, Idaho Code. Abuse, neglect or exploitation of adults is governed by Section 39-5303, Idaho Code. An exception to the physician/patient privilege for domestic violence is contained in Section 9-203, Idaho Code. ( )

**202. ADOPTION.**

Disclosure of adoption records is governed by the provisions of Sections 9-340B(6), 16-1501, 39-258, 39-259A, and 39-7501 through 39-7905, Idaho Code. Consent to adoption by children who are more than twelve (12) years old, by parents and by others, is governed by Section 16-1504, Idaho Code. ( )

**203. -- 209. (RESERVED).**

**210. CHILD PROTECTION.**

Unless allowed by these rules or other provision of law, the Department will disclose information from child protection records in its possession upon a court order obtained in compliance with Subsection 075.02 of these rules. Disclosure of Department records under the Child Protective Act is governed by Section 16-1623(f), Idaho Code. Court records of Child Protective Act proceedings are governed by Section 16-1621, Idaho Code. Pertinent federal laws and regulations include 42 USC 5106 and 45 CFR 134.20. Information regarding child fatalities or near fatalities is required to be made public by 42 USC 5106a(b)(2)(A)(vi). ( )

**211. CHILDREN'S MENTAL HEALTH.**

Consent to voluntary treatment for a minor with serious emotional disturbance, emergency and involuntary treatment are governed by the Children's Mental Health Services Act, Title 16, Chapter 24, Idaho Code. Section 16-2428, Idaho Code, describes requirements for confidentiality. ( )

**212. -- 219. (RESERVED).**

**220. HARD TO PLACE CHILDREN.**

The Department disseminates information to prospective adoptive families and families who wish to be appointed legal guardians of a child in the state's custody, as to the availability of hard-to-place children, adoption and guardianship procedures, and the existence of financial aid to adoptive families and guardians of hard-to-place children, in compliance with Section 56-804, Idaho Code. ( )

**221. HOSPITAL RECORDS.**

Records of hospitalization in a state facility are governed by Sections 39-1392b, 39-1392e and 39-1394, Idaho Code. ( )

**222. HUMAN RESOURCES.**

Disclosure of employee information is governed by Section 9-340C(1), Idaho Code. ( )

**223. INFANT/TODDLER PROGRAM.**

Consent to early intervention services and confidentiality of records that relate to the Infant/Toddler program are governed by the Individuals with Disabilities Education Act (IDEA), 20 USC 1414(a)(1)(C) and (c)(3), and 20 USC 1415(b)(3); the Family Educational Rights and Privacy Act (FERPA), 20 USC 1232g; and 34 CFR 303.400, 34 CFR 303.500 and 34 CFR part 99. ( )

**224. -- 229. (RESERVED).**

**230. MEDICAL CARE.**

Consent to apply for services or treatment is governed by Chapter 43, Title 39, Idaho Code, for hospital, medical, dental or surgical care, treatment or procedure. ( )

**231. -- 239. (RESERVED).**

**240. MENTAL ILLNESS.**

Records of assessment, treatment, and commitment or hospitalization of individuals with mental illness are governed

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by Sections 66-318, 66-348, 66-355, 66-329(i), 66-337, and 66-339, Idaho Code. ( )

**241. MINOR'S CONSENT REGARDING INFECTIOUS, CONTAGIOUS OR COMMUNICABLE DISEASE.**

Section 39-3801, Idaho Code, governs consent to treatment for infectious, contagious or communicable disease by a minor who is at least fourteen (14) years of age. ( )

**242. -- 249. (RESERVED).**

**250. SUBSTANCE ABUSE.**

Consent to treatment and confidentiality of alcohol and drug abuse patient records are governed by 42 CFR 2.12 through 2.67, and Sections 37-2743, 37-3102, 39-307, and 39-308, Idaho Code. ( )

**01. Drug Abuse.** A medical practitioner will not disclose identifying information, treatment or request for treatment, to any law enforcement officer or agency or in any proceeding, in compliance with Sections 37-2743 and 37-3102, Idaho Code. ( )

**02. Age Sixteen And Over.** Information regarding substance abuse treatment of an individual who is at least age sixteen (16) years old will not be disclosed to a parent or guardian unless authorized by the individual, in compliance with Section 37-3102, Idaho Code, and 42 CFR 2.14. Individuals who are at least sixteen (16) years old may consent to substance abuse treatment. ( )

**251. -- 259. (RESERVED).**

**260. TERMINATION OF PARENTAL RIGHTS.**

Disclosure of information regarding the termination of parental rights is governed by Section 16-2013, Idaho Code. ( )

**261. -- 269. (RESERVED).**

**270. VENEREAL DISEASES.**

Disclosures of health information pertaining to the control of venereal diseases, including Human Immunodeficiency Virus (HIV), is governed by Title 9, Chapter 6, Idaho Code. ( )

**271. -- 279. (RESERVED).**

**280. VITAL STATISTICS - VERIFICATION OF DATA.**

The Registrar will only confirm or deny the presence and accuracy of data already known to a governmental agency that requests information from a vital record. Such verifications may be conducted by telephone for Idaho state agencies. Other requests for verification require a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such other information as the Registrar requests. ( )

**281. VITAL STATISTICS - DISCLOSURE FOR RESEARCH, PUBLIC HEALTH OR STATISTICAL PURPOSES.**

Upon agreement in writing to such conditions as the Registrar may impose, the Registrar may permit the use of data from vital statistics records for research, public health or statistical purposes. The Registrar may deny a request for access to identifying information if the Registrar determines that the benefits would be outweighed by the possible adverse consequences to those individuals whose records would be used. ( )

**282. VITAL STATISTICS - REGISTRY OF PUTATIVE FATHERS.**

Except by Idaho court order or in accordance with the provisions of Section 16-1513, Idaho Code, information acquired by the confidential registry of putative fathers will not be disclosed. ( )

**283. VITAL STATISTICS - PROCEDURES FOR REQUESTING INFORMATION.**

Individuals who request access to, information from, or copies of vital records must present a signed application on forms provided or approved by the Registrar, and a copy of the front and back of signed photo identification or such

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other information as the Registrar requests. Minors who are less than fourteen (14) years old may receive certified copies of vital records that pertain to them if they present the required information. ( )

**01. Expedited Copy.** An expedited certified copy of a vital record may be issued using proprietary telecommunications services. ( )

**02. Certified Copy.** When a certified copy is issued, it is certified as a true copy or abstract of the original vital record by the officer who has custody of the record. The certified copy will include the date issued, the Registrar's signature or an authorized facsimile thereof, and the seal of the issuing office. Full or short form certified copies of vital records may be made by mechanical, electronic or other reproduction processes. ( )

**284. WOMEN, INFANTS AND CHILDREN (WIC) PROGRAM.**  
WIC information may be used and disclosed only for the purpose of establishing the eligibility of WIC applicants and participants for health and welfare programs. ( )

**285. -- 999. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.05.05 - RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES**

##### **DOCKET NO. 16-0505-0301 - (CHAPTER REPEAL)**

##### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections, 56-1003 and 56-1007, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 3, 2003 Idaho Administrative Bulletin, 03-9, page 188.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Elke Shaw-Tulloch at (208) 334-5950.

DATED this 26th day of September, 2003.

Sherri Kovach  
Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone; (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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#### **IDAPA 16, TITLE 05, CHAPTER 05**

##### **RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-9, September 3, 2003, page 188.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.05.05 - RULES GOVERNING FEES FOR HEALTH OPERATING PERMITS, LICENSES, AND INSPECTION SERVICES

##### DOCKET NO. 16-0505-0301 (CHAPTER REPEAL)

##### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-1003 and 56-1007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 2003.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule making:

This entire chapter of rules is being repealed. Sections of this chapter were moved into the Idaho Department of Environmental Quality rules IDAPA 58.01.14 "Rule Governing Fees for Environmental Operating Permits, Licenses and Inspection Services," leaving only a few substantive sections. Those remaining substantive sections are being added into relevant chapters of rules in this publication under Docket 16-0214-0301.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: The fees in this chapter will be moved into the relevant chapter of rules IDAPA 16.02.14.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the repeal of this chapter is being made to minimize publication and duplication of rules.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rules, contact Elke Shaw-Tulloch at (208) 334-5950.

Anyone can submit written comments regarding this rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 24, 2003.

DATED this 23rd day of July, 2003.

Sherri Kovach  
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450 West State Street - 10th Floor  
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**IDAPA 16.05.05 IS BEING REPEALED IN ITS ENTIRETY.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES**

**DOCKET NO. 16-0601-0301**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 1, 2002. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s), 16-1623, 16-2001, 16-2401, 56-202(b), 56-204(a), 56-204(A), 56-1003(l), 56-1004, 56-1007, 56-803, 16-1822 and 16-1827, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed text for this rule was published in the January 1, 2003 Idaho Administrative Bulletin, Volume 03-1, pages 111 through 130. Section 010 - Definitions is being amended in the pending docket to delete terms that are not referred to in this chapter of rules. Only the subsections of Section 010 that are being deleted, renumbered or modified are printed in this bulletin. Also, Section 642.04 is being amended to delete the reference to Jeff D class members.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Chuck Halligan at (208) 334-6559.

DATED this 20th day of June, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
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## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16, TITLE 06, CHAPTER 01

#### RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-1, January 1, 2003, pages 111 through 130.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0601-0301

#### SUBSECTIONS 010.23 -- 010.78

##### 010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of the rules contained in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services," the following terms and abbreviations are used as defined herein:

(3-18-99)

~~23. **Emergency Assistance To Families.** Social services, crisis or crisis avoidance payments and placement services authorized by Department workers for Emergency Assistance eligible families to meet emergency need(s).~~ (5-3-03)

**243. Extended Family Member Of An Indian Child.** As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

~~25. **FFP.** Federal Financial Participation.~~ (3-18-99)

**264. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

**275. Family And Children's Services (FACS).** Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (3-18-99)

**286. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and/or safety issues that threaten family integrity, unity or the ability to care for their members. (3-18-99)

**297. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Family and Children's Services**

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family, including, but not limited to, legal documents, identifying information, and evaluations. (3-30-01)

**3028. Family Centered Services.** An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the safety, well being and permanency of children. (3-30-01)

**3429. Family Plan.** Also referred to as Service Plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders and/or leaders should be consulted early in the plan development. (3-30-01)

**320. Family Services Worker.** Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. (7-1-02)T

**331. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)

**342. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)

**353. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (5-3-03)

**364. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (3-30-01)

**375. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

**386. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

**397. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

**4038. Indian Child's Tribe.** (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)

**4439. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

**420. Information And Referral Services.** A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-01)

**431. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal

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government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

**442. Interethnic Adoption Provisions Of 1996 (IEPA).** IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)

**453. Interstate Compact On The Placement Of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (7-1-02)T

**464. Issue.** Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (3-30-01)

**475. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

**486. Kinship Care.** Alternative care that is provided by kin. (3-30-01)

**497. Legal Guardianship.** A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (5-3-03)

**5048. Licensed.** Facilities or programs being licensed in accordance with the provisions of Idaho Department of Health and Welfare Rules IDAPA 16.06.02, "Rules and Standards for Child Care Licensing". (3-18-99)

**5149. Licensing.** See Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," Section 100. (3-18-99)

**520. Medicaid.** See "Title XIX". (3-30-01)

**531. Multiethnic Placement Act Of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

**542. Objective.** Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-01)

**553. Parent(s).** The person(s) who, by birth or through adoption, is considered legally responsible for a child. For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s): birth parent(s), foster parent(s), adoptive parent(s), step-parent(s), and pre-adoptive parent(s). The term "legal guardian(s)" is not included in the definition of parent(s). (7-1-02)T

**564. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**575. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

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**DEPARTMENT OF HEALTH AND WELFARE  
Family and Children's Services****Docket No. 16-0601-0301 - Pending Rule  
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- 586.** **P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980". (3-30-01)
- 597.** **P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997", amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)
- 6058.** **Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)
- 6459.** **Prevention.** Programs, services and activities aimed at preventing child abuse and neglect and severe emotional disturbance. (3-30-01)
- 620.** **Protective Services.** To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)
- 631.** **Purchase Of Services.** Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)
- 642.** **Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)
- a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)
- b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)
- c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)
- d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)
- 653.** **Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)
- 664.** **Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)
- 675.** **Respite Care.** Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-30-01)
- 686.** **Risk Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-30-01)
- 697.** **SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

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### DEPARTMENT OF HEALTH AND WELFARE Family and Children's Services

### Docket No. 16-0601-0301 - Pending Rule and Amendment to Temporary Rule

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~~7068.~~ **Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

~~71.~~ **Self-Reliance Services.** *Supportive social services provided to individuals and their families to increase their ability to obtain and retain employment.* (3-18-99)

~~7269.~~ **Serious Emotional Disturbance (SED).** An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and behavior. A disorder shall be considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment shall be assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment shall require a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self-harmful behavior; Moods/emotions; or thinking. A substance abuse disorder or conduct disorder, and/or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (7-1-02)T

~~730.~~ **Social Service Block Grant.** The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)

~~741.~~ **TAFI.** Temporary Assistance to Families in Idaho. (3-18-99)

~~752.~~ **Target Population.** Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)

~~76.~~ **Title IV-A.** *Title under the Social Security Act which provides public assistance to families with dependent children and is commonly identified as Aid to Families with Dependent Children (AFDC), repealed in 1997 except for eligibility requirements for Title IV-E.* (3-18-99)

~~77.~~ **Title IV-B.** *Title under the Social Security Act which provides Child Welfare Services. This categorical service program is aimed at improving the general welfare of children regardless of income.* (3-18-99)

~~783.~~ **Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance *(formerly provided for under Title IV-A of the Social Security Act)* and adoption assistance payments for certain eligible children. (3-18-99)(7-1-02)T

~~794.~~ **Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)

~~8075.~~ **Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

~~8476.~~ **Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~8277.~~ **Unmarried Parents' Services.** Unmarried parent(s) services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for all unmarried parent(s) who need such service in relation to their plans for their children and arranging for and/or paying for prenatal and confinement care for the well-being of the parent and infant. (5-3-03)

~~8378.~~ **Voluntary Services Agreement.** A written and executed agreement between the Department and

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Family and Children's Services**

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parent(s) or legal guardian(s) regarding the goal, issues, objectives and task responsibility including payment. A children's mental health family services plan is the Voluntary Service Agreement. (5-3-03)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **SUBSECTION 642.04**

##### **642. ACCESS TO SERVICES.**

The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (3-30-01)

**04. Use Of Public Funds And Benefits.** Public funds and benefits will be used to provide services for children with serious emotional disturbances, ~~including all Jeff D. class members~~ and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources shall be provided to minimize the need for institutional or other residential placement. Services shall be individually planned with the family to meet the unique needs of each child and family. Services shall be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the child. ~~(7-1-02)T~~(7-1-02)T



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 16-1624, 16-2001, 16-2402, 56-202(b), 56-203(b), 56-204(a), 56-204A, 56-1003, and 56-1004, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Board of Health and Welfare asked to have the term "legal parent" clarified in a previous rule change. Additional clarification is needed to make terms inclusive and to reduce confusion. Transcriptional and grammar changes are being made for consistency. The current practice for the appeal process needs to have the rules consistent with the IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". The rules are also being reviewed for obsolete language, terms that need to be defined, and corrections to references. The term "qualified individual" is being replaced with the term "certified adoption professional" and a definition is being added.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(b), Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal regulations.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because amendments were made to comply with governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Chuck Halligan, (208) 334-6559.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 22, 2003.

DATED this 5th day of November, 2002.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
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## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0601-0301

#### **010. DEFINITIONS AND ABBREVIATIONS.**

For the purposes of the rules contained in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services," the following terms and abbreviations are used as defined herein: (3-18-99)

**01. IV-E Foster Care.** Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (3-18-99)

**02. Adoption Assistance.** Funds provided to adoptive parent(s) of children who have special needs and/or could not be adopted without financial or medical assistance. (7-1-01)T

**03. Adoption Services.** Protective service through which children are provided with permanent homes, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. (7-1-01)T

**04. Alternate Care.** Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, in accordance with the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act. (3-30-01)

**05. Alternate Care Plan.** A federally required component of the Family Plan for children in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. (7-1-01)T

**06. Assessment.** First step in the planning process which results in systematic documentation of the family's issues of concern, their strengths, and desired outcomes. (3-30-01)

**07. Board.** The Idaho State Board of Health and Welfare. (3-18-99)

**08. Case Management.** A change oriented service to families that assures and coordinates the provision of family risk assessment, case planning, treatment and other services, protection, advocacy, review and reassessment, documentation and timely closure of a case. (3-18-99)

**09. Case Plan.** See "Family Plan". (3-18-99)

**10. Central Office.** The state level administrative office of the Department of Health and Welfare located in Boise, Idaho. (3-18-99)

**11. Certified Adoption Professional (formerly "qualified individual").** An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (7-1-02)T

**142. Child Mental Health.** All of the following children under eighteen (18) years of age shall be served without regard to income or type of health insurance: (3-30-01)

**a.** Those who have a serious emotional disturbance or a grave disability due to a serious mental illness; and (3-30-01)

**b.** Present a significant risk of harm to themselves or to others, due to their mental illness; and

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(3-30-01)

c. Because of their mental illness are at risk for out-of-home placements or are currently in out-of-home placement and lack adequate resources to participate in their community's non-public system of care; or

(3-30-01)

d. Are involuntarily committed to the Department for out-of-home placement. (3-30-01)

**123. Child Mental Health Services.** Services provided in response to the needs of children with a serious emotional disturbance and their families. These services are provided in accordance with the provisions of Section 16-2402 et seq., Idaho Code, the "Children's Mental Health Services Act". (3-30-01)

**134. Child Protection.** All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter shall be served without regard to income. (3-30-01)

**145. Child Protective Services.** Services provided in response to potential, alleged or actual abuse, abandonment or neglect of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act". (3-18-99)

**156. Compact Administrator.** The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-21-01 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code; or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq., Idaho Code. ~~(3-18-99)~~(7-1-02)T

**167. Concurrent Planning.** Planning which addresses a child's need for a permanent family by working toward family reunification while, at the same time, developing an alternative plan that will provide permanency for the child through adoption, guardianship, placement with a relative or other permanent placement. (3-30-01)

**178. DHW Regions.** Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices. (3-18-99)

**189. Day Care For Children.** Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (3-18-99)

**190. Day Treatment Services.** Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis. (3-18-99)

**201. Department.** The Idaho Department of Health and Welfare. (3-18-99)

**212. Director.** The Director of the Department of Health and Welfare or designee. (3-18-99)

**223. Emergency Assistance To Families.** Social services, crisis or crisis avoidance payments and placement services authorized by Department workers for Emergency Assistance eligible families to meet emergency need(s). (7-1-01)T

**234. Extended Family Member Of An Indian Child.** As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

**245. FFP.** Federal Financial Participation. (3-18-99)

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**256. Family.** Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (7-1-01)T

**267. Family And Children's Services (FACS).** Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (3-18-99)

**278. Family Assessment.** An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and/or safety issues that threaten family integrity, unity or the ability to care for their members. (3-18-99)

**289. Family Case Record.** Electronic and hard copy compilation of all documentation relating to a family, including, but not limited to, legal documents, identifying information, and evaluations. (3-30-01)

**2930. Family Centered Services.** An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the safety, well being and permanency of children. (3-30-01)

**301. Family Plan.** Also referred to as Service Plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders and/or leaders should be consulted early in the plan development. (3-30-01)

**342. Family Services Worker.** Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. ~~For purposes of pre-placement home studies, adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and Placement Supervision Reports, "family services workers" also include licensed counselors or psychologists, or individuals who have at least bachelor's degrees in social work, marriage and family therapy, or other social sciences.~~ (3-30-01)(7-1-02)T

**323. Field Office.** A Department of Health and Welfare service delivery site. (3-18-99)

**334. Goal.** A statement of the long term outcome or plan for the child and family. (3-18-99)

**345. Guardianship Assistance.** State benefits provided to legal guardian(s) for the support of a child who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. (7-1-01)T

**356. Independent Living.** Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (3-30-01)

**367. Indian.** Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

**378. Indian Child.** Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

**389. Indian Child Welfare Act (ICWA).** The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

**3940. Indian Child's Tribe.** (3-18-99)

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- a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)
- b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (3-18-99)
- 401. Indian Tribe.** Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)
- 442. Information And Referral Services.** A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-01)
- 423. Intercountry Adoption Act of 2000 (P.L. 106-279).** Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (7-1-01)T
- 434. Interethnic Adoption Provisions Of 1996 (IEPA).** IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (7-1-01)T
- 45. Interstate Compact On The Placement Of Children (ICPC).** Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (7-1-02)T
- 446. Issue.** Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (3-30-01)
- 457. Kin.** Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)
- 468. Kinship Care.** Alternative care that is provided by kin. (3-30-01)
- 479. Legal Guardianship.** A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may only take place when there has been a termination of parental rights. (7-1-01)T
- 4850. Licensed.** Facilities or programs being licensed in accordance with the provisions of Idaho Department of Health and Welfare Rules IDAPA 16.06.02, "Rules and Standards for Child Care Licensing". (3-18-99)
- 4951. Licensing.** See Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, "Rules and Standards for Child Care Licensing," Section 100. (3-18-99)
- 502. Medicaid.** See "Title XIX". (3-30-01)
- 543. Multiethnic Placement Act Of 1994 (MEPA).** MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

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**524. Objective.** Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-01)

**535. Parent(s).** The person(s) who, by birth or through adoption, is considered legally responsible for a child. For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s): birth parent(s), foster parent(s), adoptive parent(s), step-parent(s), and pre-adoptive parent(s). The term "legal guardian(s)" is not included in the definition of parent(s). ~~(7-1-01)~~(7-1-02)T

**546. Permanency Planning.** A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

**557. Personal Care Services (PCS).** Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

**568. P.L. 96-272.** Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980". (3-30-01)

**579. P.L. 105-89.** Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997," amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

**586. Planning.** An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

**596. Prevention.** Programs, services and activities aimed at preventing child abuse and neglect and severe emotional disturbance. (3-30-01)

**602. Protective Services.** To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)

**643. Purchase Of Services.** Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)

**624. Qualified Expert Witness--ICWA.** A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

**a.** A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)

**b.** An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)

**c.** A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)

**d.** An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

**635. Relative.** Person related to a child by blood, marriage, or adoption. (3-30-01)

**646. Reservation.** Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

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Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

**657. Respite Care.** Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-30-01)

**668. Risk Assessment.** Standardized protocol for contact between a family services worker and a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-30-01)

**672. SSI (Supplemental Security Income).** Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

**6870. Safety Plan.** Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe. (3-30-01)

**6971. Self-Reliance Services.** Supportive social services provided to individuals and their families to increase their ability to obtain and retain employment. (3-18-99)

**702. Serious Emotional Disturbance (SED).** An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and/or behavior. A disorder shall be considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment shall be assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment shall require a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self-harmful behavior; Moods/emotions; or thinking. A substance abuse disorder or conduct disorder, and/or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (7-1-01)(7-1-02)T

**743. Social Service Block Grant.** The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)

**724. TAFL.** Temporary Assistance to Families in Idaho. (3-18-99)

**735. Target Population.** Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)

**746. Title IV-A.** Title under the Social Security Act which provides public assistance to families with dependent children and is commonly identified as Aid to Families with Dependent Children (AFDC), repealed in 1997 except for eligibility requirements for Title IV-E. (3-18-99)

**757. Title IV-B.** Title under the Social Security Act which provides Child Welfare Services. This categorical service program is aimed at improving the general welfare of children regardless of income. (3-18-99)

**768. Title IV-E.** Title under the Social Security Act which provides funding for foster care maintenance (formerly provided for under Title IV-A of the Social Security Act) and adoption assistance payments for certain eligible children. (3-18-99)

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~~779.~~ **Title XIX (Medicaid).** Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)

~~780.~~ **Title XXI.** (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

~~7981.~~ **Tribal Court.** A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

~~802.~~ **Unmarried Parents' Services.** Unmarried parent(s) services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for all unmarried parent(s) who need such service in relation to their plans for their children and arranging for and/or paying for prenatal and confinement care for the well-being of the parent and infant. (7-1-01)T

~~843.~~ **Voluntary Services Agreement.** A written and executed agreement between the Department and parent(s) or legal guardian(s) regarding the goal, issues, objectives and task responsibility including payment. A children's mental health family services plan is the Voluntary Service Agreement. (7-1-01)T

### (BREAK IN CONTINUITY OF SECTIONS)

**420. OTHER SOURCES OF ALTERNATE CARE - CASEY FAMILY PROGRAM, BOISE DIVISION.**  
Children may be referred to the Casey Family Program, Boise Division for placement when it is determined that reunification of the ~~birth~~ family is not anticipated to be possible. Once the child has been accepted into the Casey Family Program, Boise Division, the Program will provide direct case management services pursuant to a contract with the Division of Family and Community Services with final responsibility for decision-making continuing to rest with the Department. Children placed with the Casey Family Program shall continue to be eligible for all Department programs, and regional and Casey Family staff shall combine resources to the extent possible to serve these children in the most effective manner. ~~(3-30-01)~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### **554. RESPONSE PRIORITIES.**

The Department shall use the following statewide standards for responding to allegations of abuse, neglect or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards shall be documented in the family's case file with a description of action taken, which shall be reviewed and signed by the Child Protective Supervisor. (3-18-99)

**01. Priority I.** The Department shall respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement shall be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child shall be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. (3-30-01)

**02. Priority II.** A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement shall be notified within twenty-four (24) hours. The child shall be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of



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receipt of all Priority II referrals which involve issues of abuse or neglect.

(3-18-99)

**03. Priority III.** A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no ~~parental~~ abuse or neglect ~~by parent(s) or legal guardian(s)~~. A family services worker shall respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral.

~~(7-1-02)T~~(7-1-02)T

**04. Notification To Referent.** The Department of Health and Welfare, Family and Children's Services, shall notify the reporting individual of the receipt of the referral within five (5) days.

(3-18-99)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **642. ACCESS TO SERVICES.**

The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services.

(3-30-01)

**01. Local Resources And Plan Development.** Children with serious emotional disturbances and their families may have access to local resources and services which do not require placement outside their home into alternate care. A plan will be developed between the Department, the parent(s) or legal guardian(s), the child, if appropriate, and the service provider. This plan will be specific, measurable and objective in the identification of the goal(s), relevant issues, objectives and outcomes.

(7-1-02)T

**02. Payment For Treatment.** When parent(s) or legal guardian(s) request Department payment for a child's treatment, a service agreement must be negotiated and signed by the parent(s) or legal guardian(s) and the Department. A referral will be made to Child Support Services to collect payment for the cost of out-of-home care.

(7-1-02)T

**03. Involuntary Placement Under The Children's Mental Health Services Act.** When a seriously emotionally disturbed child presents a significant danger to himself or herself and/or to others and the child's parent(s) or legal guardian(s) will not consent to a voluntary placement of the child, the child can be placed involuntarily through a court order. Involuntary Treatment Orders are limited to one hundred twenty (120) days and can be changed to a voluntary placement upon the request of the consenting parent(s) or legal guardian(s). At the end of one hundred twenty (120) days, a judicial redetermination is required to extend the involuntary treatment order for an additional set period of time.

(7-1-02)T

**04. Use Of Public Funds And Benefits.** Public funds and benefits will be used to provide services for children with serious emotional disturbances, including all Jeff D. class members and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources shall be provided to minimize the need for institutional or other residential placement. Services shall be individually planned with the family to meet the unique needs of each child and family. Services shall be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the ~~their~~ child.

~~(7-1-02)T~~(7-1-02)T

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **714. VOLUNTARY TERMINATION.**

The Department becomes involved in voluntary terminations when a ~~parent or~~ parent(s) requests the Department to place their special needs child or children for adoption and when voluntary termination is a goal in the family case

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plan. Parent(s) requesting placement of a potentially healthy unborn or healthy newborn child should be referred to the licensed private adoption agencies in Idaho. ~~(7-1-02)F~~(7-1-02)T

### 715. VOLUNTARY CONSENT.

In obtaining a parent's consent to terminate their parental rights through the Department, a Consent to Terminate Parental Rights and Waiver of Rights to Hearing shall be signed before the Magistrate Judge. Once ~~the~~ a parent's consent has been given before the court, a corresponding petition under the Termination of Parent and Child Relationship Act shall be filed by legal counsel representing the Department. ~~(3-30-01)F~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

### 719. INVESTIGATION.

An investigation of the allegations in the petition and a report recommending disposition of the petition under the Termination of Parent and Child Relationship Act shall be completed and submitted to the court within thirty (30) days, unless an extension of time is granted by the court. The purpose of this investigation is to verify the allegations through all available sources, including the petitioner, ~~birth~~ parent(s) and possibly the extended ~~birth~~ family of the child. The Report to the Court under the Termination of Parent and Child Relationship Act, is to serve as an aid to the court in determining a disposition that complies with the Indian Child Welfare Act where applicable, or that will be in the best interest of the child. If a petition is filed by a party other than the Department, the court may order such an investigation by the Department. The law also allows completion of an investigation by an authorized agency or a ~~qualified individual~~ certified adoption professional, prior to adjudication and disposition. If the Department is the petitioner, the report shall accompany the petition. Reports submitted under the Termination of Parent and Child Relationship Act based on ~~the birth~~ a parent's voluntary consent shall include: ~~(7-1-02)F~~(7-1-02)T

01. **Description Of Investigation.** The circumstances of the petition and the facts determined from the investigation; and (3-18-99)
02. **Child-Related Factors.** Child related factors, including: (3-18-99)
  - a. Child's current functioning and behaviors; (3-18-99)
  - b. Medical, educational and developmental needs of the child; (3-18-99)
  - c. Child's history and past experiences; (3-18-99)
  - d. Child's identity needs; (3-18-99)
  - e. Child's interests and talents; (3-18-99)
  - f. Child's attachments to current caretakers and any absent parent; (3-18-99)
  - g. Child's current living situation; (3-18-99)
  - h. Indian child's membership or eligibility for membership in tribe(s); (3-18-99)
  - i. Indian child's contacts with tribe(s); (3-18-99)
  - j. The present circumstances, history, condition and desire of the parent whose rights are being terminated regarding plans for the child; (3-18-99)
  - k. Such other facts as may be pertinent to the parent and child relationship and this particular case; i.e., compliance with Interstate Compact Placement on Children; and (3-18-99)
  - l. A recommendation and reasons as to whether or not the termination of the parent and child

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relationship should be granted.

(3-18-99)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 721. REPORT TO THE COURT - INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department a report is required pursuant to Section 16-2008(b), Idaho Code. Reports submitted under the Termination Act based on an involuntary termination of parental rights shall include: (3-30-01)

**01. Allegations.** The allegations contained in the petition. (3-30-01)

**02. Investigation.** The process of the assessment and investigation. (3-30-01)

**03. Family Circumstances.** The present condition of the child and parent(s), especially the circumstances of the parent(s) whose rights are being terminated and contact with the parent(s) of a minor parent, unless lack of contact is explained. (7-1-02)T

**04. Medical Information.** The information forms regarding the child, birth mother, and birth father shall be submitted with the Report to the Court. Reasonably known or available medical and genetic information regarding both birth parents and source of such information, as well as reasonably known or available providers of medical care and services to the birth parents. (3-30-01)

**05. Efforts To Maintain Family.** Other facts that pertain to the parent and child relationship including what reasonable efforts have been made to keep the child with the family. (3-30-01)

**06. Absent Parent.** Reasonable efforts made by the petitioner to locate ~~the an~~ absent parent(s) and provision of notification to an unmarried father of the paternity registry requirement pursuant to Section 16-1513, Idaho Code. ~~(7-1-02)F~~(7-1-02)T

**07. Planning.** Proposed plans for the child consistent with: (3-30-01)

**a.** The Indian Child Welfare Act, including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and (3-30-01)

**b.** The Multi-Ethnic Placement Act and Interethnic Placement Act and regulations prohibiting states from delaying or denying cross-jurisdictional adoptive placements with an approved family which shall include individualized documentation regarding this child's needs in permanent placement. (3-30-01)

**08. Compliance With The Indian Child Welfare Act.** Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so: (3-30-01)

**a.** Notification of the pending proceedings by registered mail with return receipt requested, to the parent(s) or Indian custodian(s) and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (7-1-02)T

**b.** Notification of the right of the parent(s) or Indian custodian(s), and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (7-1-02)T

**c.** Notification that if the court determines indigency, the parent(s) or Indian custodian(s) shall have the right to court-appointed counsel; (7-1-02)T

**d.** Evidence, including identity and qualifications of expert witnesses, that continued custody of the

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child by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child;  
(7-1-02)T

e. A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and  
(3-30-01)

f. Upon the court's written decision to terminate parental rights, two certified copies of the "Findings of Fact, Conclusions of Law and Decree" are to be placed in the child's permanent record.  
(3-30-01)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 760. PSYCHOLOGICAL EVALUATION.

An evaluation by a psychologist or a psychiatrist can be required by the family services worker when ~~either~~ an applicant has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker, in consultation with his supervisor, determines that there appear to be emotional problems in the family that merit further evaluation.  
(~~3-30-01~~)(7-1-02)T

#### 761. DENIAL OF APPLICATION.

Following an initial interview, an applicant~~s~~ who does not appear to meet the Department's requirements at the time of initial application may be denied a full home study. The family shall be advised why they were ineligible for a full home study and provide notice to the applicant of their right to appeal this decision. Upon resolution of the factors leading to the denial, the applicant may again file an application and receive a home study.  
(~~3-30-01~~)(7-1-02)T

#### 762. APPLICATION AND DATA COLLECTION.

Following the initial interview, the application, medical forms, list of items to be verified and other pertinent information needed to complete the adoptive home study shall be given to the ~~potential~~ prospective adoptive parent(s).  
(~~7-1-02~~)(7-1-02)T

01. **Interviews.** Family assessment interviews as well as individual interviews must be held with the ~~potential~~ prospective adoptive parent(s).  
(~~7-1-02~~)(7-1-02)T

02. **Home Study Of Applicant.** A full home study must then be made to determine the ability of the applicant~~s~~ to meet the needs of children available for adoption, and ~~to determine~~ the ~~kind~~ specific characteristics of children ~~for whom they~~ the applicant indicates would be most suitably placed in the home. For an Indian child, the study shall also determine the prevailing social and cultural standards of the Indian community in which the parent(s) or extended family resides or maintains social and cultural ties.  
(~~7-1-02~~)(7-1-02)T

03. **Submission Of Completed Home Study.** Once the adoptive home study has been initiated, the completion of the home study shall occur within three (3) months. The original and one (1) copy of the completed home study and all supporting documentation must be submitted to the State Adoption Program Specialist immediately upon approval of the supervisor.  
(3-18-99)

#### 763. APPLICANT RESPONSIBILITIES.

It shall be the responsibility of the adoptive applicant~~s~~ to keep the field office informed of any changes of circumstances, or of any subsequent decision against adoption. An applicant~~s~~ ~~are~~ is to maintain contact with the Department on an annual basis. In the absence of contact from the adoptive applicant~~s~~, the Department shall initiate contact on an annual basis to confirm the accuracy of information in the files and the status of the application. The contact shall be verified by a written annual update to the adoption home study.  
(~~3-30-01~~)(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

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### 770. ADOPTIVE HOME STUDIES.

Pre-placement home studies for Department adoptions, ~~and for~~ independent, relative and step-parent adoptions shall document the following: ~~(3-18-99)~~(7-1-02)T

**01. Residence.** References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (3-18-99)

**02. Verification Of Ages Of Adopting Parent(s).** Legal verification that the person(s) adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of ~~a birth~~ the child's parent, shall be accomplished by: ~~(3-18-99)~~(7-1-02)T

**a.** Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)

**b.** Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. (3-30-01)

**c.** If verifying documentation is not available, the report shall indicate the date and place of birth and reason for lack of verification. (3-18-99)

**03. Medical Examination.** A medical examination, with the medical report form signed and dated by the examining physician. (3-18-99)

**04. Photograph.** A photograph of the adopting family. (3-18-99)

771. -- 779. (RESERVED).

### 780. FACTORS TO BE CONSIDERED IN DETERMINING SUITABILITY OF ADOPTIVE PARENTS.

**01. Indian Child.** For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act shall be followed: (3-18-99)

**a.** Extended family; (3-18-99)

**b.** Other members of the child's tribe; or (3-18-99)

**c.** Other Indian families. (3-18-99)

**02. Needs Of Adoptive Child.** The primary ~~eligibility~~ factor in the review of a prospective adoptive ~~parent(s)' family's~~ eligibility is the ~~applicant(s)'~~ ability to protect and promote the best interests of a child to be placed in their home. ~~(7-1-02)T~~(7-1-02)T

**03. Availability Of ~~Potential~~ Prospective Adoptive Families.** The Department will not delay or deny the placement of a child with an approved family that is located outside of the jurisdiction responsible for the care and planning for the child. ~~(3-18-99)~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

### 800. PLACEMENT OF THE CHILD.

The field office shall provide full confidential background information and discuss the child's history fully with the ~~adopting~~ prospective adoptive parent(s) prior to the placement. The disclosure of background information shall be confirmed at the time of placement by a written statement from the family services worker to the prospective adoptive family which they will be asked to acknowledge and sign. A copy of this statement shall be provided to the adoptive family and one (1) copy will be kept in the child's permanent record. The child's record shall be reviewed by the

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placing region's Program Manager or designee prior to being forwarded to the supervising family services worker. The child's case record must be complete and transferred to the supervising family services worker at the time of placement. ~~(7-1-02)T~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 830. FEES FOR ADOPTIONS THROUGH THE DEPARTMENT.

The application fee covers the costs of processing the ~~adoptive~~ adoption application and does not guarantee that the family will receive a child for adoption. The application fee is non-refundable. Money collected through the Department's adoption program may be utilized to pay state adoption assistance payments for children with special needs ~~children~~, purchase of service fees, recruitment costs and placement fees for private agencies serving children who have special needs. Families who are not able to pay the costs associated with the ~~P~~pre-placement ~~H~~home ~~S~~study, ~~S~~supervisory reports, or the ~~R~~report to the ~~C~~court, may apply to the Regional Family and Children's Services Program Manager for waiver of the fees. ~~(3-18-99)~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 832. PLACEMENT SUPERVISION - TRANSFER FROM OTHER PUBLIC AGENCY.

~~If~~ When a ~~couple~~ prospective adoptive parent(s) moves to Idaho ~~after~~ with a child who has been placed with them by the public agency in their former state of residence, the Interstate Compact on the Placement of Children (ICPC) coordinator of the former state of residency may request courtesy supervision ~~shall~~ to be provided at no charge to the family. ~~(3-30-01)~~(7-1-02)T

#### 833. PLACEMENT SUPERVISION - TRANSFER FROM OUT OF STATE PRIVATE AGENCY.

~~If~~ When a ~~couple~~ prospective adoptive parent(s) moves to Idaho, ~~after~~ with a child who has been placed with them by a private agency in their former state of residence, the sending state agency shall arrange through the Interstate Compact ~~for on~~ the Placement of Children, services through one ~~(+)~~ of Idaho's private, licensed adoption agencies, or a ~~qualified individual approved for termination and adoption services~~ certified adoption professional. ~~(3-18-99)~~(7-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 850. INDEPENDENT, RELATIVE AND STEPPARENT ADOPTIONS.

Independent adoptive placements shall be handled in accordance with Section 16-1506, Idaho Code. Person(s) petitioning to adopt a child should have initially completed a pre-placement home study that includes a positive recommendation for adoption. Proceedings to adopt a child shall be commenced by the filing of a petition by the ~~person or~~ person(s) proposing to adopt the child. Within five (5) days of receiving a petition to adopt a minor child by a person(s) unrelated to the child or not married to a ~~birth~~ parent of the child, the court shall serve a copy of the petition on the Director. The court may also request the Department to conduct an investigation in the case of a relative or step parent adoption. The pre-placement investigation home study and the adoption investigation report to the court shall be completed by ~~licensed~~ qualified staff of the Department, ~~licensed~~ staff of a qualified child-placing children's adoption agency, or a ~~qualified individual~~ certified adoption professional. ~~(3-18-99)~~(7-1-02)T

01. Prospective Adoptive Parent Is The Spouse Of Birth A Child's Parent. ~~Where~~ When ~~the~~ a prospective adoptive parent is married to the ~~birth~~ parent of the ~~adoptive~~ child being adopted, the ~~R~~report to the ~~C~~court under the Adoption of Children Act shall be completed for the prospective adoptive parent only upon order of the court. ~~(3-18-99)~~(7-1-02)T

02. Exigent Circumstances. In exigent circumstances where the prospective adoptive parent(s) are

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determined by the court to have been unable to complete the pre-placement study with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines that another placement is appropriate. When exigent circumstances exist, the pre-placement home study, combined with the adoption report under the Adoption of Children Act, shall be initiated within five (5) days of placement, and shall be completed within sixty (60) days. (3-30-01)

**851. -- 859. (RESERVED).**

**860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.**

Following the placement there shall be a supervisory period of at least six (6) months before the initiation of legal adoption proceedings. In situations where a foster family has a significant relationship with a child and the child has been placed in their home for at least the last twelve (12) months, the supervisory period may be reduced to a minimum of three (3) months. The family services worker shall make scheduled visits to the home at least monthly during this period to assist the child and the family in their adjustment to each other and will update the child's permanent record by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the State Adoption Program Specialist, the Department shall request the prospective adoptive parent(s) ~~to~~ contact their attorney. The regional family services worker shall provide the attorney with the necessary documentation to file the petition for adoption. ~~(7-1-02)T~~ (7-1-02)T

**861. PROGRESS REPORTS.**

Progress reports shall be prepared regularly and shall be based on the family services worker's findings. (3-18-99)

**01. Initial And Subsequent Reports.** The first progress report must be made within two (2) weeks after placement, and subsequent progress reports must be made at intervals not to exceed thirty (30) days. These reports shall include: (7-1-02)T

- a.** The family services worker's observation of the child and the prospective adopting parent(s), with emphasis on: (3-18-99)
- b.** Special needs/circumstances of child(ren) at time of placement; (3-18-99)
- c.** Services provided to child(ren) and family during report period; (3-18-99)
- d.** Services to be provided to child(ren) and family; (3-18-99)
- e.** General appearance and adjustment of child(ren) during report period (may include eating, sleep patterns, responsiveness, bonding); (3-18-99)
- f.** School/day care/day treatment program adjustment; (3-18-99)
- g.** Health/developmental progress, medical practitioner information; (3-18-99)
- h.** Whether the child(ren) have been accepted for coverage on family's medical insurance, when coverage begins, and whether there will be any limitations/exclusions; (3-30-01)
- i.** Family's adjustment to adoptive placement; (3-18-99)
- j.** Whether respite care is a need for the family; (3-18-99)
- k.** Changes in family situation or circumstances; (3-18-99)
- l.** Areas of concern during report period as addressed by both child(ren) and adoptive parent(s); and (3-18-99)
- m.** Date of next required six (6) month review or twelve (12) month permanency hearing; (3-18-99)
- 02. Monthly Foster Care Payments - Pre-Adoptive Placement.** To receive Title IV-E monthly foster

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care payments ~~During~~ the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license ~~is required for all prospective adoptive parents.~~ (3-30-01)(7-1-02)T

**03. Adoptive And Foster Home Studies.** A foster home evaluation completed by the Department of Health and Welfare or a licensed children's adoption agency forms the foundation of the pre-placement adoptive homestudy. (3-30-01)

**04. Final Progress Report.** The final report shall include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. The family's attorney who will be handling the finalization of the adoption should be identified. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement shall be brought to the attention of the Department. (3-30-01)

### 862. PETITION TO ADOPT UNDER THE ADOPTION OF CHILDREN ACT.

**01. Filing A Petition.** When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney shall file a petition to adopt with the court. A copy of that petition shall be served upon the director of the Department. Upon receipt of a copy of the petition to adopt, the family services worker, licensed children's adoption agency worker or qualified individual certified adoption professional shall verify the allegations set forth in the petition and make a thorough investigation of the matter and report the findings in writing to the court within thirty (30) days. (3-30-01)(7-1-02)T

**02. Registration And Acknowledgment.** Upon receipt of the petition to adopt, the field office shall register ~~# the petition~~ and acknowledge receipt to the court and to the petitioner(s) or private adoption agency. If the licensed adoption agency or qualified individual certified adoption professional ~~which~~ who completed the pre-placement home study is not identified, ~~that~~ the information should be obtained from the petitioner's attorney. The register shall indicate the date the petition was received, the date the study is due in court, the date the completed study was sent to the court, whether an Indian child is involved, and other pertinent data. (3-18-99)(7-1-02)T

### 863. INVESTIGATION OF PETITION TO ADOPT AND REPORT TO THE COURT.

According to Section 16-1506, Idaho Code, an investigation ~~of~~ regarding the allegations stated in the petition and subsequent written report to the court on the investigation is required to of findings must be filed with the court unless the investigation is waived by order of the court. The ~~completed report to the court shall be filed with the~~ prospective adoptive family's pre-placement home study will be filed at the same time as the written report of investigation. If the family services worker, licensed child placing agency staff, or certified adoption professional is unable to complete the study within thirty (30) days, an extension of time shall be requested in writing of the court, stating the reasons for the request. If the worker suspects that the child is of Indian heritage and the child's tribe or the Secretary of the Interior has not been notified, the worker shall inform the court and the petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act. ~~The~~ This adoption report to the court shall ~~contain~~ address the following: (3-30-01)(7-1-02)T

**01. Initial Interview.** Upon receipt of the petition, the family services worker or qualified individual shall arrange an initial interview with the adopting family. (3-30-01)

**02. Time Frame For Investigation.** ~~If the family services worker or qualified individual is unable to complete the study within thirty (30) days, an extension of time shall be requested in writing of the court, stating the reasons for the request. If the family services worker suspects that the child is of Indian heritage and the child's tribe or the Secretary has not been notified, the family services worker shall inform the court and the petitioner's attorney and the independent agency of the need to comply with the Indian Child Welfare Act.~~ (3-30-01)

**03. Legal Availability Of The Child.** It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identity, birthdate, and parentage of the child are as represented in the petition. ~~The family services worker shall review the documentary evidence presented by the petitioners to verify the allegations contained in the petition.~~ The family services worker shall interview the family and any other person(s) having knowledge in the matter, review all documentary evidence



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presented by the petitioner(s), record the information and source ~~in the report to the court~~ of the information, noting any discrepancies ~~found~~. Such documentary evidence shall include but is not limited to the following:

~~(3-30-01)~~(7-1-02)T

a. The birth certificate of the child ~~and the birth or death certificates of the birth parent(s) from the Bureau of Vital Statistics;~~

~~(7-1-02)~~(7-1-02)T

b. The consent(s) of ~~both birth~~ the child's parent(s) to terminate their parental rights, termination decrees for any parent(s) whose parental rights have been terminated involuntarily by the court, and documentation of marriage and divorce ~~decrees;~~

~~(3-30-01)~~(7-1-02)T

c. Indian child's parent(s) or Indian custodian(s), and tribe have received notice of their right to intervene; and

(7-1-02)T

d. Consent to adoption has been secured for all persons from whom it is required, including a legal guardian(s), to make the child legally available for adoption.

~~(7-1-02)~~(7-1-02)T

e. The death certificate of a deceased parent;

(7-1-02)T

f. Verification from the Bureau of Vital Statistics of the registry of any putative father; and

(7-1-02)T

g. The Interstate Compact on the Placement of Children Form 100-A, for a child born outside of the state of Idaho, to determine if required state authorizations have been given, or if the Compact does not apply.

(7-1-02)T

**042. Needs Of The Child.** The ~~study~~ report to the court shall address the needs of the child ~~in regards to the proposed adoption~~, including but not limited to:

~~(3-18-99)~~(7-1-02)T

a. The history of the child and the child's birth family;

(3-18-99)

b. The family history for a child who has been previously adopted, should include information about the child's previous adoptive family and the circumstances of the disruption;

(7-1-02)T

~~bc.~~ A detailed description of ~~the~~ the circumstances ~~of that brought about~~ the placement with the prospective adoptive family;

~~(3-30-01)~~(7-1-02)T

~~ed.~~ The state of Idaho Social, Medical and Genetic History forms shall be completed and submitted to the court, showing reasonably known or available medical and genetic information regarding both birth parents and the child, as well as reasonably known or available providers of medical care and services to birth parents and child; and

(3-30-01)

~~de.~~ The appropriateness of the prospective adoptive family for the particular child or children who are the subject of the petition.

~~(3-30-01)~~(7-1-02)T

~~e.~~ A financial accounting, approved by the court, of any financial assistance given to the birth parent(s) which exceeds five hundred dollars (\$500), pursuant to Section 18-1511, Idaho Code.

~~(3-30-01)~~

**053. Degree Of Relationship Of The Child To Petitioners.** In those cases where the court has ordered an investigation of petitions to adopt by relatives or step parents, the study shall record such alleged relationship and specify the documentary evidence the petitioners have of that relationship.

(3-30-01)

**064. Evaluation And Recommendation.** The family services worker shall provide a brief summary of data presented in prior sections and ~~for~~ the pre-placement home study, supporting the recommendation regarding the adoption.

~~(3-18-99)~~(7-1-02)T

**075. Medical Information.** A copy of medical and genetic information compiled in the investigation

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shall be made available to the ~~adopting~~ prospective adoptive family by the family services worker or ~~qualified individual~~ certified adoption professional prior to the final order of adoption. ~~(3-30-01)~~(7-1-02)T

**086. Confidentiality Of Information.** The family services worker shall exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study. (3-30-01)

**07. Financial Accounting.** A financial accounting must be approved by the court, of any financial assistance given to the birth parent(s) which exceeds five hundred dollars (\$500), in accordance to Section 18-1511, Idaho Code. (7-1-02)T

**864. -- 869. (RESERVED).**

**870. REMOVAL OF A CHILD FROM A ~~AN~~ PROSPECTIVE ADOPTIVE HOME.**

Despite careful assessment of the child and the family prior to placement, circumstances may arise which make it necessary to remove the child from the prospective adoptive home prior to adoption. The child may manifest problems ~~that~~ the family is unable to accept or to handle constructively; or changed circumstances may develop ~~that~~ which make it inadvisable for the placement to continue. The final decision to remove a child from ~~an~~ prospective adoptive home ~~may result due to the request of the adoptive parent(s), or upon the decision of~~ will be made by the Department as the legal guardian of the child and reported to the State Adoption Program Specialist. ~~(7-1-02)~~F(7-1-02)T

~~**01. Prior Approval On Decision For Removal.** The decision for removal may be made by the Department, the family or, in some cases, jointly. The removal must be prior authorized by the Department and reported to the State Adoption Program Specialist. (3-30-01)~~

~~**02871. TEMPORARY REPLACEMENT AFTER DISRUPTION.**~~

~~When a disruption occurs and it becomes necessary to remove a child from ~~an~~ prospective adoptive home, the field office where the child has been placed shall be responsible for finding a temporary arrangement for the child until another permanent placement can be arranged. In the case of the adoption of an Indian child, the consent of the parent(s) may be withdrawn for any reason at any time prior to the entry of a final decree of adoption, and the child returned to the parent(s). (7-1-02)~~F(7-1-02)T

~~**8742. PREFERENCES FOR TEMPORARY PLACEMENT - INDIAN CHILD.**~~

~~Preferences for placement of an Indian child shall be observed in the temporary and permanent placement unless the child is being returned to the parent(s) or Indian custodian(s) from whose custody the child was originally removed. (3-18-99)~~

~~**8723. -- 879. (RESERVED).**~~

### (BREAK IN CONTINUITY OF SECTIONS)

**884. OPENING SEALED RECORDS OF ADOPTIONS.**

~~Pursuant to~~ In addition to the exceptions noted in Section 16-1511, Idaho Code, ~~upon the motion of petitioners, or upon its own motion the probate court will order that the record of its proceedings in any adoption proceeding must be sealed. When such order has been made and entered, the court must seal such record and thereafter the seal will not be broken except~~ a sealed adoption proceedings may be opened in the following circumstances according to the Indian Child Welfare Act: ~~(3-18-99)~~(7-1-02)T

~~**01. Motion Of Petitioners.** Upon the motion of petitioners or the person adopted; (3-30-01)~~

**021. Individual's Motion Of An Indian Individual.** Upon motion of an Indian individual who has reached the age of eighteen (18) and was the subject of an adoption, the court shall provide tribal affiliation, if any, of the individual's biological parent(s) and other information necessary to protect any rights flowing from the

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individual's tribal relationship;

~~(7-1-02)T~~(7-1-02)T

**032. ~~Other Request From The Secretary Of The Interior Or The Indian Child's Tribe.~~** Upon request of the Secretary of the Interior or the Indian child's tribe, evidence of efforts to comply with the Indian Child Welfare Act shall be made available; ~~and to the parties requesting such information.~~ ~~(3-30-01)~~(7-1-02)T

**04. ~~Resealing Records.~~ ~~Such record can be resealed.~~**

~~(3-30-01)~~

885. -- 889. (RESERVED).

### **889. CERTIFIED ADOPTION PROFESSIONAL REQUIREMENTS.**

An applicant requesting to become a Certified Adoption Professional must meet the following criteria: (7-1-02)T

**01. College Degree.** A minimum of a bachelor's degree in a field deemed related to adoptions by the Department's Family and Children's Services Program, such as social work, psychology, family counseling ~~other or related behavioral science;~~ and (7-1-02)T

**02. Adoption Training.** Must have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years. (7-1-02)T

**03. Designee Of A Tribe.** Individuals designated by the Indian child's tribe to perform these duties are not subject to the provisions in Subsections 889.01 and 889.02 of this rule. (7-1-02)T

### **890. QUALIFIED INDIVIDUAL REQUIREMENTS TERMS OF CERTIFICATION FOR ADOPTION PROFESSIONALS.**

*Qualified individuals are family services workers as defined in these rules or others with related college degrees and professional experience, deemed related to the field of adoptions by the Family and Children's Services program manager, who have completed a minimum of twenty (20) hours of training in adoption services within the last four (4) years and who are certified by the Department. Certification will be for a period of four (4) years. Individuals designated by the Indian child's tribe to perform these duties are not subject to these provisions.* (3-18-99)

**01. Certification.** Certification for adoption professionals will be completed through the regional Family and Children's office and will be effective for a period of four (4) years. (7-1-02)T

**042. Recertification.** ~~Qualified Individuals~~ Certified adoption professionals must apply for renewal of their certificate every four (4) years and provide documentation of twenty (20) hours of current adoption training during that period. ~~(3-18-99)~~(7-1-02)T

**03. Denial Of Recertification.** The Department may choose not to recertify a ~~qualified individual for one (1) or more of the following reasons~~ certified adoption professional. Notification of denial will be made by the Department by certified mail. The notice shall state the specific grounds for denial of recertification. This decision may be appealed within ~~thirty-five~~ twenty-eight (3528) days of receipt of notification under the provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". Grounds for denial of recertification are one (1) or more of the following: ~~(3-30-01)~~(7-1-02)T

- a. Substandard quality of work following the development of a quality improvement plan; (3-30-01)
- b. Failure to gain twenty (20) additional hours of adoption continuing education required for recertification; or (3-30-01)

c. A demonstrated pattern of negligence or incompetence in performing the duties of a ~~qualified individual~~ certified adoption professional. ~~(3-30-01)~~(7-1-02)T

**024. Decertification.** A ~~qualified individual~~ certified adoption professional can be decertified by the Department at any time during a four (4) year period of certification. Notification of decertification will be made by the Department by certified mail. The notice shall state the specific grounds for decertification. This decision may be appealed within ~~thirty-five~~ twenty-eight (3528) days of receipt of notification under the provisions in IDAPA

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### DEPARTMENT OF HEALTH AND WELFARE Rules Governing Family and Children's Services

Docket No. 16-0601-0301  
Temporary and Proposed Rulemaking

16.05.03. "Rules Governing Contested Case Proceedings and Declaratory Rulings". Grounds for decertification are one (1) or more of the following: ~~(3-30-01)~~(7-1-02)T

- a. Conviction for a felony; (3-30-01)
- b. Negligence in carrying out the duties of a ~~qualified individual~~ certified adoption professional; ~~(3-30-01)~~(7-1-02)T
- c. Misrepresentation of facts regarding their qualifications ~~to be a qualified individual~~ and/or the qualifications of a prospective adoptive family to adopt; and ~~(3-30-01)~~(7-1-02)T
- d. A demonstrated pattern of failure to obtain Departmental review and approval of ~~Ppre-P~~placement ~~H~~homestudies and ~~P~~placement ~~S~~supervision ~~R~~reports. ~~(3-30-01)~~(7-1-02)T

#### 891. ~~QUALIFIED INDIVIDUALS'~~ CERTIFIED ADOPTION PROFESSIONAL'S CLIENT RELATIONSHIP.

~~Qualified individuals~~ A certified adoption professional shall not assume a legal relationship with any child for whom they have been contracted to perform services. ~~(3-18-99)~~(7-1-02)T

#### (BREAK IN CONTINUITY OF SECTIONS)

#### 893. RECORDS OF THE ~~QUALIFIED INDIVIDUAL~~ CERTIFIED ADOPTION PROFESSIONAL.

Records of the pre-placement home studies, court reports, and supervisory reports provided by the ~~qualified individual~~ certified adoption professional must be made available to the regional Family and Children's Services program manager or designee one (1) week prior to the required court filing date. The regional designee will be responsible for monitoring of quality of the services provided. ~~(3-30-01)~~(7-1-02)T

#### (BREAK IN CONTINUITY OF SECTIONS)

#### 895. DEPARTMENT RESPONSIBILITY TO ~~QUALIFIED INDIVIDUAL~~ CERTIFIED ADOPTION PROFESSIONAL.

The regional Family and Children's Services designee shall review the reports provided within a timely manner to insure filing of documentation by required court date by the ~~qualified individual~~ certified adoption professional. The region shall initiate corrective action plans when the documentation of any ~~Qualified Individual~~ certified adoption professional is determined to be incorrect or substandard. ~~(3-30-01)~~(7-1-02)T

#### (BREAK IN CONTINUITY OF SECTIONS)

#### 922. RETROACTIVE ADOPTION ASSISTANCE BENEFITS.

The Department of Health and Welfare, Division of Family and Community Services may negotiate retroactive adoption assistance benefits for a maximum of twenty-four (24) months from the date of adoption assistance application, identified in Section 920 of these rules. ~~(3-18-99)~~(7-1-02)T

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS**

**DOCKET NO. 16-0603-0301**

#### **NOTICE OF RULEMAKING**

#### **PENDING RULE AND AMENDMENT TO TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the amendment to Section 005 of the temporary rule is November 1, 2001 the effective date of Section 006 is April 14, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 39-311 and 56-1005(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the existing temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule. Section 16.06.03.005 is being amended to include the Department of Health and Welfare's (DHW) telephone number and internet address, making this Section consistent with other DHW rules. Section 16.06.03.006 is amended to use the current chapter name of "Use and Disclosure of Department Rules" which was changed and published on April 2, 2003.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the January 1, 2003 Administrative Bulletin, Volume 03-1, pages 137 through 153.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Pharis Stanger at (208) 334-4944.

DATED this 21st day of July, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

DEPARTMENT OF HEALTH AND WELFARE  
Alcohol/Drug Abuse Prevention/Treatment Programs

Docket No. 16-0603-0301 - Pending Rule and  
Amendment to Temporary Rule

### IDAPA 16, TITLE 06, CHAPTER 03

#### RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed  
text are printed in this Bulletin following this notice.

The complete text of the proposed rule was published in the Idaho Administrative  
Bulletin, Volume 03-1, January 1, 2003, pages 137 through 153.

This rule has been adopted as a pending rule by the Agency and is now pending  
review and approval by the 2004 Idaho State Legislature as a final rule.

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#### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 16-0603-0301

#### **005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS ~~AND~~ -- STREET ADDRESS -- TELEPHONE -- AND INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except  
holidays designated by the state of Idaho. (11-1-01)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and  
Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (11-1-01)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at  
450 West State St., Boise, Idaho 83720-0036. (11-1-01)T

**04. Telephone.** The telephone number for the Idaho Department of Health and Welfare is (208) 334-  
5500. (11-1-01)T

**05. Internet Website.** The Department's internet website is found at <http://www.2.state.id.us/dhw/>.  
(11-1-01)T

#### **006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter  
1, Idaho Code and IDAPA 16.05.01, "~~Rules Governing Protection~~ Use and Disclosure of Department Records".

(11-1-01)T(4-14-03)T

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.06.03 - RULES AND MINIMUM STANDARDS GOVERNING ALCOHOL/DRUG ABUSE PREVENTION AND TREATMENT PROGRAMS

DOCKET NO. 16-0603-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** These temporary rules are effective November 1, 2001 and July 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 39-311 and 56-1005(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

A new section (Section 145) is added that provides standards by which Outpatient Drug Court Facilities can be approved for substance abuse treatment. Three required sections (Sections 004, 005, 006) have been added that were not present in the current rule. Section 010 Definitions, has been revised adding three definitions, title changes to the licensed social worker to comply with the Social Work Licensing Act, the deletion of a category of counselor trainee that is no longer applicable and deletion of addresses that are not necessary. Needed clarification and updates are made pertaining to supervision of counselors, work experience of program directors working with adolescents, reimbursement by programs under contract with the Department, and the use of patient placement criteria.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Sections 67-5226(1)(a) and 67-5226(1)(b), Idaho Code and are necessary in order to protect the public health, safety, welfare and to comply with amendments to governing law.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted with a sub-committee of the State Drug Court Coordinating Committee, Idaho Supreme Court, Local Trial Court Administrators, existing drug courts, Department of Correction, the Department of Health and Welfare – Substance Abuse Program, and substance abuse and mental health private providers.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Pharis Stanger at (208) 334-4944.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 22, 2003.

DATED this 5th day of November, 2002.

Sherri Kovach, Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**DEPARTMENT OF HEALTH AND WELFARE**  
**Alcohol/Drug Abuse Prevention & Treatment Programs**

**Docket No. 16-0603-0301**  
**Temporary and Proposed Rulemaking**

P.O. Box 83720  
Boise, Idaho 83720-0036  
(208) 334-5564 phone  
(208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0603-0301

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules.

(11-1-01)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (11-1-01)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (11-1-01)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State St., Boise, Idaho 83720-0036. (11-1-01)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code and IDAPA 16.05.01, "Rules Governing Protection and Disclosure of Department Records".

(11-1-01)T

**0047. -- 009. (RESERVED).**

**010. DEFINITIONS.**

The following terms are defined as they are used in these rules. Nothing in any of these definitions shall be read as being in conflict with definitions stated in Section 39-302, Idaho Code. (4-26-95)

**01. Active Client.** A client ~~receiving~~ who receives services from an alcohol/drug abuse treatment program, who has had face to face contact with a qualified professional of the program within the preceding thirty (30) days. ~~(4-26-95)~~(11-1-01)T

**02. Aftercare.** Services to provide support to an individual who is in a recovery program. (4-26-95)

**03. Alternative Activities.** Prevention services that provide opportunities for persons at risk for substance abuse to participate in activities that exclude alcohol, tobacco, and other drugs. (4-5-00)

**04. Applicant.** A person, agency, or organization who has filed an application to become an approved alcohol/drug treatment program under these rules. (4-26-95)

**05. Appropriate.** A term used to indicate that a particular procedure, treatment, test or service is effective, is clearly indicated, is adequate in quantity and is provided in the best setting to meet the client's needs. (4-26-95)

**06. Approved Alcohol/Drug Abuse Treatment Program.** An alcohol/drug abuse treatment program which provides activities to treat problems related to alcohol and drug use, which is approved in accordance with



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Section 39-305, Idaho Code, and these rules and minimum standards. Approved alcohol/drug abuse treatment programs in Idaho may be private for profit, private nonprofit, or operated by a governmental unit. (4-26-95)

**07. Assessment.** The collection of data necessary to develop an individualized treatment strategy aimed at eliminating or reducing alcohol/drug consumption by a thorough evaluation of the person's physical, psychological, and social status, a determination of the environmental forces that contribute to the alcohol/drug using behavior, and examination of the person's support system and resources. (4-26-95)

**08. CARE.** The Commission on Accreditation of Rehabilitation Facilities, ~~101 North Wilmet Road, Suite 500, Tucson, Arizona 85711.~~ (4-26-95)(11-1-01)T

**09. Certificate Of Approval.** A certificate issued by the Department of Health and Welfare to an alcohol/drug abuse treatment program and facilities which it deems to be in compliance with these rules and minimum standards. (4-5-00)

**10. Certified, Credentialed Or Licensed Alcohol/Drug Counselor.** A counselor possessing voluntary certification or licensure by a recognized state or national alcohol/drug abuse/addiction counselor credentialing or certifying organization. Knowledge and skills may be acquired through a combination of specialized training, education and experience. (4-26-95)

**11. Certified Prevention Specialist.** A person recognized by the Idaho Board of Alcohol/Drug Counselor's Certification as a specialist in substance abuse education and the prevention of alcohol/drug abuse. This level of certification does not give authority to provide any form of counseling. (4-5-00)

~~**12. Certified Chemical Dependency Trainee (CDT).** A person possessing voluntary apprentice-level certification or licensure by a recognized state or national alcohol/drug abuse/addiction credentialing or certifying organization. They are persons who do not meet the requirements for a certified or licensed alcohol/drug counselor, but do have sufficient alcohol/drug education and training to enable them to work with clients under the supervision of a qualified professional. (4-5-00)~~

~~**132. Clinical Director.** The program staff member responsible for oversight of all clinical aspects of the treatment services provided. (4-26-95)~~

~~**143. Client.** A person receiving treatment for alcohol/drug use, abuse, or addiction. The term is synonymous with patient, resident, consumer or recipient of treatment. (4-26-95)~~

~~**154. Community-Based Process.** Prevention services to involve and assist communities and social institutions to incorporate prevention into their existing services/work and to transfer the knowledge and skills required for them to deliver prevention services. (4-5-00)~~

~~**15. Competencies.** Competencies are the knowledge, skills and attitudes required for the members of the substance abuse clinical staff as a prerequisite to proficiency in the professional treatment of substance abuse. The model of competencies is determined by the Department. (11-1-01)T~~

~~**16. Contract.** A formal agreement with any organization, agency or individual specifying the services, personnel, products or space to be provided by, to or on behalf of the program and the consideration to be expended in exchange. (4-26-95)~~

~~**17. Counselor.** A licensed professional counselor under Title 54, Chapter 34, Idaho Code, or an individual holding a masters degree in counseling from an approved college or university and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, or experience in the treatment of persons with problems related to alcohol/drug use. (4-26-95)~~

~~**18. Criminogenic Need.** A client attribute shown by research to be correlated with criminal behavior and to be an appropriate target for treatment intervention. (11-1-01)T~~

~~**189. Current.** Any license, permit, certificate or other documentation of review or inspection of the~~

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program, its staff or facility sites which is dated within the preceding twenty-four (24) months. (4-5-00)

~~1920.~~ **Department.** The Idaho Department of Health and Welfare. (4-26-95)

~~201.~~ **Detoxification Services.** Services necessary to monitor individuals who are undergoing the systematic reduction of a toxic agent from the body during withdrawal. (4-26-95)

~~212.~~ **Director.** The Director of the Department of Health and Welfare. (4-26-95)

~~223.~~ **Discharge.** The point at which the client's active involvement in treatment is terminated, and the program no longer maintains active responsibility for the care of the client. (4-26-95)

~~24.~~ **Drug Court Outpatient Treatment Facility.** A Department approved setting for the treatment of alcohol and drug problems for individuals under the jurisdiction of a local drug court. (11-1-01)T

~~25.~~ **Drug Court Team.** Individuals who collectively plan and evaluate services to drug court participants and determine participant compliance, progress, sanctions, movement from one treatment phase to another, and continuation or termination from drug court treatment. (11-1-01)T

~~236.~~ **Early Intervention Prevention Services.** Organized activities that are designed for individuals within indicated populations who are experimenting with alcohol, tobacco, or other drugs or exhibit other risk related behaviors. The goal of services for these populations is to modify the risk behavior to prevent the need for substance abuse treatment. (4-5-00)

~~247.~~ **Early Intervention Treatment Services.** Services which may be delivered in a treatment setting and are designed to explore and address problems or risk factors that appear to be related to an individual's substance use. The goal of the service is to assist the individual in recognizing the harmful consequences of inappropriate substance use. (4-5-00)

~~258.~~ **Education.** Strategies that teach people critical information about alcohol and other drugs and the physical, emotional and social consequences of their use. (4-26-95)

~~269.~~ **Emergency Treatment.** The immediate resolution of an acute physical, social, or psychological emergency caused by excessive or chronic alcohol/drug use. (4-26-95)

~~2730.~~ **Environmental Activities.** Services that focus on institutional and community change to prevent or reduce substance abuse within given geographical areas. (4-5-00)

~~2831.~~ **Executive Director.** The individual appointed by the governing body to act on its behalf in the overall management of the program. Other job titles may include administrator, director, superintendent, program administrator, president, vice-president and executive vice-president. (4-26-95)

~~2932.~~ **Facility.** The building(s) including furnishings and fixtures, where persons with alcohol or drug problems receive services. This is synonymous with offices, clinic, or physical plant. (4-26-95)

~~3033.~~ **Governing Body.** The individual(s), board of directors, group or agency that has ultimate authority and responsibility for the overall operation of an alcohol/drug abuse treatment program. (4-26-95)

~~314.~~ **Guardian.** A parent, trustee, conservator, committee or other individual or agency empowered by law to act on behalf of, or have responsibility for, a client or applicant for treatment services. (4-26-95)

~~325.~~ **Halfway House Facility.** A setting for services provided to persons who need the support of an alcohol/drug-free environment to maintain recovery. (4-26-95)

~~336.~~ **Incapacitated.** As a result of alcohol or drug use, a person is unconscious or his judgment is otherwise so impaired that he is incapable of making a rational decision with respect to his need for treatment, or is incompetent to consent to treatment. (4-26-95)

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**347. Incompetent Person.** A person who has been adjudged incompetent by a court of law having jurisdiction in the state of Idaho. (4-26-95)

**358. Indirect Provision Of Services.** Services provided to clients through agreements a program has made with self-employed individuals or outside agencies/organizations. These agreements may be verbal commitments, contractual arrangements, letters of agreement, or memorandum of understanding. The services may be provided at the program's facility or at another location. (4-26-95)

**369. Individualized Treatment Plan.** A written action plan, based on assessment data, that identifies the client's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives and the criteria for terminating the specified interventions. (4-26-95)

**3740. Information Dissemination.** Prevention services that inform the general public and others about the nature and extent of alcohol and other drug use, abuse and addiction, its effect on individuals, families and communities, and available prevention and treatment programs and other resources. (4-5-00)

**3841. Inpatient Treatment Facility.** A setting for the treatment of alcohol/drug problems that is also a licensed hospital as defined by Title 39, Chapter 13, Idaho Code. (4-26-95)

**3942. Intoxicated Person.** A person whose mental or physical functioning is impaired as a result of alcohol or drug use, including the inappropriate use of prescription drugs. (4-26-95)

**403. Inventory Of Services.** The various program activities intended to cause or support the reduction or elimination of alcohol or drug use. These activities may include, but are not limited to, education, individual, group or family counseling, vocational rehabilitation services, medical and psychological services, and self-help groups. These services may include activities provided by the program through contractual arrangement with an outside organization. (4-26-95)

**44. Level Of Service Inventory - Revised (LSI-R).** An assessment tool used to assess criminal offenders for their risk to commit further offenses and their service needs. (11-1-01)T

**475. JCAHO.** The Joint Commission of on American Health Care Accreditation of Healthcare Organizations, 875 North Michigan Avenue, Chicago, Illinois 60611. (4-26-95)(11-1-01)T

**426. Medically Trained Personnel.** A licensed nurse, nurse practitioner, physician's assistant or licensed physician. (4-26-95)

**437. Medical Screening.** An examination done by a licensed nurse, nurse practitioner, physician's assistant or a licensed physician. (4-26-95)

**448. Medical Supervision.** Care provided under the direction of a licensed physician. (4-26-95)

**459. NFPA.** The National Fire Protection Association - Batterymarch Park, Quincy, Massachusetts 02269. (4-26-95)(11-1-01)T

**4650. Nurse.** A licensed professional nurse (R.N.), licensed practical nurse (L.P.N.) or nurse practitioner as defined by Title 54, Chapter 14, Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience treating persons with problems related to alcohol/drug use or abuse. (4-26-95)

**4751. Outpatient Treatment Facility.** A setting for treatment activities of alcohol/drug problems that does not provide twenty-four (24) hour per day care. (4-26-95)

**4852. Person.** Any individual, firm, partnership, corporation, company, association, joint stock association, governmental unit or legal successor thereof. (4-26-95)

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### DEPARTMENT OF HEALTH AND WELFARE Alcohol/Drug Abuse Prevention & Treatment Programs

### Docket No. 16-0603-0301 Temporary and Proposed Rulemaking

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**4953. Pharmacist.** An individual licensed under Title 54, Chapter 17, Idaho Code, to prepare, preserve, compound and dispense drugs and chemicals. (4-26-95)

**504. Physician.** A person who is licensed to practice medicine in the state of Idaho in accordance with the provisions of the Medical Practice Act, Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**545. Physician Assistant.** A person who is licensed to render patient services under the direction of a physician in the State of Idaho in accordance with the provisions of the Medical Practice Act, Section 54-1801, et seq., Idaho Code, and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**526. Policies.** The rules adopted by the alcohol/drug abuse treatment program for the regulation of its internal affairs and its dealings with others. (4-26-95)

**537. Prevention Services.** Activities through programs to inform, educate, impart skills, and provide appropriate referrals. The prevention strategies used include information dissemination, education, alternatives, problem identification and referral, community-based process, and environmental. (4-5-00)

**548. Problem Identification And Referral.** Prevention services to identify and assess those who are engaging in age inappropriate alcohol and tobacco use or the use of illicit drugs for the first time. The purpose of the services is to determine if their behavior can be reversed through education. This strategy does not include a determination of the need for treatment. (4-5-00)

**559. Program.** Refers to the organization offering alcohol/drug treatment services. It includes the organization's facilities, management, staffing pattern, and activities. A program receives a certificate of approval from the Department of Health and Welfare. (4-26-95)

**560. Program Evaluation.** Processes primarily used by the program's administration to assess and monitor, on a regular or continuous basis, program operation, service delivery, quality assurance, and client outcome. (4-26-95)

**5761. Provisional Approval.** A temporary certificate of approval issued to a alcohol/drug abuse treatment program in operation at the time of promulgation of new rules, in order to afford reasonable time to comply with the new rules and to obtain approval, or which, while not in full compliance with rules, has no deficiencies which would endanger the health, safety and welfare of clients and is in the process of making the necessary changes to comply fully. (4-26-95)

**5862. Psychologist.** A person who is licensed in accordance with Title 54, Chapter 23, Idaho Code, to practice psychology and who, for the purposes of these rules and minimum standards, also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**5963. Qualified Professional.** A member of one (1) of the following professional disciplines, as defined herein: certified, credentialed or licensed alcohol and drug counselor, licensed professional counselor, licensed nurse, licensed physician, psychologist, counselor holding a master's degree in a related field from an approved college or university, licensed, licensed clinical or certified licensed masters social worker, a person holding a bachelor's degree in a related field, or a person holding an associate degree in chemical dependency counseling who has applied for the Certified Alcohol/Drug Counselor (CADC), pending successful completion of the next testing cycle. A qualified professional must have one thousand forty (1,040) hours of supervised experience providing substance abuse treatment. (~~4-26-95~~)(7-1-02)T

**604. Quality Assurance.** An ongoing evaluative process that not only ensures compliance with minimum standards but provides for continuous improvements in the quality of services. (4-26-95)

**645. Residential Treatment Facility.** A setting for the treatment of alcohol/drug problems that provides twenty-four (24) hour per day living accommodations for clients. (4-26-95)

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**626. Retrospective Care Review.** Evaluative activities of the client file conducted when the individual is no longer an active client. (4-26-95)

**637. Screening.** A brief process conducted prior to admission to the drug/alcohol treatment program to determine if the individual meets the program's admission criteria. (4-26-95)

**648. Service.** The activities of a treatment program grouped according to a common goal or purpose. Examples of services are Treatment Services, Food Services, Social Services, Nursing Services, and Vocational Rehabilitation Services. (4-26-95)

**659. Social Worker.** A person who is licensed to practice social work under the Social Work Licensing Act, Title 54, Chapter 32, Idaho Code, and who, for the purposes of these rules and minimum standards also shall have specialized training, education, and experience in alcohol/drug treatment. (4-26-95)

**6670. Staff Member.** A person who is directly employed by or assigned to the program on either a full-time or part-time basis. (4-26-95)

**671. State Alcohol/Drug Authority.** The Idaho Department of Health and Welfare is designated as the State Alcohol/Drug Authority in Section 39-303, Idaho Code. (4-26-95)

**6872. Treatment.** Provision of individual therapy, group therapy, assessment, education, and other appropriate services. (4-26-95)

**6973. Treatments.** The activities of a program that have as a desired outcomes the elimination or reduction of alcohol and drug use and arresting, reversing, or retarding of problems associated with alcohol or drug abuse, or both. (4-26-95)

**704. Treatment Supervisor.** The person responsible for the overall management of all aspects of the provision of a treatment service or multiple treatment services. Examples of this are: adolescent treatment supervisor, adult treatment supervisor, residential treatment supervisor. (4-26-95)

**745. Uniform Fire Code.** Refers to the latest edition of the Uniform Fire Code, according to Sections 41-253 and 41-254, Idaho Code, as minimum standards for the protection of life and property from fire and explosions. (4-26-95)

**011. -- 019. (RESERVED).**

### **020. GENERAL REQUIREMENTS.**

**01. Certificate Of Approval Required.** A certificate of approval is required for an alcohol/drug abuse treatment program to directly or indirectly provide alcohol/drug treatment in the state of Idaho. A director or owner of a program must submit a completed application to the Department on forms provided by the Department along with an application fee prior to the date of the initial operation or expiration of the certificate of approval. Approval is required for an alcohol/drug abuse treatment program to be included on the Department's list of programs which meet the standards specified in these rules. Programs must be on the list in order to receive referrals from the Department or any law enforcement officer and to receive any kind of state or federal reimbursement. (4-26-95)

**02. Approved Alcohol/Drug Abuse Treatment ~~Programs~~ Facilities.** Pursuant to these rules, the Department may approve facilities that provide substance abuse treatment. These shall not be interpreted as being in conflict with Section 39-304, Idaho Code. These facilities include: ~~(4-26-95)~~(11-1-01)T

- a. Inpatient Facility; (4-26-95)
- b. Residential Facility; (4-26-95)
- c. Outpatient Facility; (4-26-95)

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- d. Halfway House Facility; (4-26-95)
- e. Detoxification Facility. (4-26-95)
- f. Drug Court Outpatient Facility. (11-1-01)T

**03. Approval For A Program With Multiple Facilities.** An alcohol/drug treatment program may be approved for more than one (1) facility type when that program complies with the specific requirements of each. Failure of any one (1) facility type to receive approval shall not affect the approval of other facility types. (4-26-95)

**04. Approval For Multiple Facilities Attached To One Program.** An alcohol/drug abuse treatment program with more than one (1) facility type may submit one (1) application for all facilities located in the same Department region. (4-26-95)

- a. The application shall list each facility by type. (4-5-00)
- b. A certificate of approval will be issued for each facility site. (4-26-95)
- c. Failure of any one facility to receive approval shall not affect the approval of other facilities listed in the application. (4-26-95)

**05. Programs Serving Adolescents.** Any alcohol/drug abuse treatment program which provides treatment for persons under the age of eighteen (18) shall meet the following standards: (4-26-95)

a. Any alcohol/drug abuse treatment program which provides services to adolescents shall require all staff members having contact with adolescents to submit to a criminal history check in accordance with the provisions of the Idaho Department of Health and Welfare Rules, IDAPA 16.06.02, Section 611, "Rules Governing Standards for Child Care Licensing". (4-26-95)

b. Shall provide separate treatment activities for adults and adolescents. (4-26-95)

c. Any alcohol/drug abuse treatment program which provides twenty-four (24) hour per day residential care as an alternative to parental care and outpatient treatment for persons under the age of eighteen (18) shall also be licensed under the Child Care Licensing Reform Act, Title 39, Chapter 12, Idaho Code.

~~(4-26-95)~~(11-1-02)T

- i. Application for child care licensure is made to the Department of Health and Welfare. (4-26-95)
- ii. Facilities licensed as hospitals under Title 39, Chapter 13, Idaho Code, are exempt from this requirement. (4-26-95)

**06. Out-Of-State Program And Facilities Approval.** The Department will accept the approval and certification by the state in which a treatment program and facilities are located and utilized by Idaho clients. Programs operated within the state of Idaho, irrespective of the program headquarters, must meet the Department's approval and certification requirements. (4-5-00)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **032. EXECUTIVE DIRECTOR.**

All alcohol/drug abuse treatment programs shall have provisions for an executive director in accordance with the standards set forth in this section. (4-26-95)

**01. Appointment/Hiring Procedure.** The governing body shall appoint or hire an executive director

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for the alcohol/drug abuse treatment program. When more than one person in a program has executive authority from, and responsibility to, the governing body, those persons shall comply with all standards that relate to the executive director. (4-26-95)

**02. Qualifications.** The qualifications of the executive director shall be stated in the governing body bylaws or administrative procedures. (4-26-95)

**a.** The executive director is a qualified professional with previous responsibility relevant to administration of an alcohol/drug treatment program. (4-26-95)

**b.** Experience may be substituted for requirements of a qualified professional, if carefully evaluated, justified and documented by the governing body. (4-26-95)

**c.** In residential programs primarily serving children or adolescents, the executive director ~~shall~~ must meet the requirements established in ~~the "Child Care Licensing Act", Title 39, Chapter 12, Idaho Code~~ IDAPA 16.06.02, "Rule Governing Standards for Child Care Licensing," Section 784. ~~(4-26-95)~~ (11-1-01)T

**03. Authority.** The governing body bylaws and administrative policies state the executive director's responsibility to the governing body for the overall operation of the program, including the control, utilization and management of its physical and financial assets and the recruitment and direction of staff. (4-26-95)

**04. Responsibilities.** The governing body bylaws or administrative policies shall state the executive director's responsibilities in assisting the governing body in formulating policy by preparing, presenting and reviewing with them: (4-26-95)

**a.** A current table of organization which sets forth lines of staff authority, responsibility and communication in accordance with policies established by the governing body. (4-26-95)

**b.** Policies and procedures to guide the administration and operation of the program. (4-26-95)

**c.** Long-term and short-term plans for the program, including the plan for an inventory of treatments as outlined in Section 040 of these rules. (4-26-95)

**d.** Reports on the nature and extent of funding and other available resources. (4-26-95)

**e.** Reports describing the program's operations. (4-26-95)

**f.** Reports evaluating the efficiency and effectiveness of program activity. (4-26-95)

**g.** Budgets and financial statements. (4-26-95)

**h.** Any data, information, reports and records requested by the Department. (4-26-95)

**05. Continuing Education.** There shall be on file at the program documentation that the executive director attends and participates in continuing education opportunities. (4-26-95)

**06. Guardianship.** The executive director shall not act as, or become legal guardian of, any client of the alcohol/drug abuse treatment program. (4-26-95)

### (BREAK IN CONTINUITY OF SECTIONS)

#### **050. STAFF COMPOSITION.**

The alcohol/drug treatment program shall have a sufficient number of treatment staff, qualified professionals, administrative and support staff to provide for the care and treatment of clients, in accordance with the standards set

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forth in this section. (4-26-95)

**01. Supervision.** Unless otherwise specified, programs providing treatment services shall provide for the following supervisory staff: (4-26-95)

**a.** Program Administrator. The program shall provide for a Program Administrator who is responsible for oversight of all services provided by the program. (4-26-95)

**b.** Treatment Supervisor. The program shall provide for a Treatment Supervisor who shall be located on-site at the treatment facility. The individual may supervise more than one (1) treatment activity. This position can also be the Clinical Director, Program Administrator, or both. In those instances where these positions are combined, standards shall be met for all positions. (4-26-95)

**c.** Clinical Director. The program shall provide for a Clinical Director who can be the same individual or position as the Program Administrator, Treatment Supervisor, or both. In those instances where these positions are combined, all standards shall be met. (4-26-95)

**02. Qualifications.** Qualifications of the supervisory staff shall be verified through written documentation of work experience, education and classroom instruction. The supervisory staff shall meet the following standards: (4-26-95)

**a.** Program Administrator. Combination of education and experience as follows: (4-26-95)

i. Five (5) years full-time paid professional experience in alcohol/drug abuse treatment with at least one (1) year in administration; or (4-26-95)

ii. Bachelor's Degree in relevant field and four (4) years paid full-time professional experience with one (1) year in administration; or (4-26-95)

iii. Master's Degree and three (3) years paid full-time professional experience with one (1) year in administration; and (4-26-95)

iv. Knowledge and demonstrated competence in planning, budget, and other administrative duties. (4-26-95)

**b.** Treatment Supervisor. Combination of education and experience as follows: (4-26-95)

i. Five (5) years full-time paid professional experience in alcohol/drug abuse treatment with at least two (2) years in direct treatment; or (4-26-95)

ii. Bachelor's Degree in relevant field and four (4) years paid full-time professional experience with two (2) years in direct treatment; or (4-26-95)

iii. Master's Degree and three (3) years paid full-time professional experience with two (2) years in direct treatment; and (4-26-95)

iv. One (1) year paid full-time experience in supervision. (4-26-95)

v. Knowledge and experience in treatment including client evaluation, counseling techniques, relapse prevention, case management, and family therapy. (4-26-95)

**c.** Clinical Director. Combination of education and experience as follows: (4-26-95)

i. Master's Degree and five (5) years paid full-time professional experience with three (3) years in direct alcohol-drug abuse treatment and one (1) year paid full-time experience in supervision; and (4-26-95)

ii. Knowledge and experience demonstrating competence in treatment including client evaluation,



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counseling techniques, relapse prevention, case management, and family therapy. (4-26-95)

iii. For outpatient programs providing services to adolescents, the clinical director must have two (2) years of experience working with families or children in a social service setting, working knowledge of child and adolescent growth and development, and the effects of alcohol and drugs on a child's growth and development.  
(11-1-01)T

**03. Clinical Supervision.** The alcohol/drug abuse treatment program shall provide for supervision of all clinical activities by qualified professionals. (4-26-95)

**a.** The written plan for an inventory of treatments provides and defines the procedure for the supervision of all clinical activities by qualified professionals. (4-26-95)

**b.** All members of the treatment team who have been assigned specific treatment responsibilities shall be qualified by training or experience and demonstrated competence. (4-26-95)

**c.** All members of the treatment team shall be supervised by qualified professionals who have a combination of education and experience sufficient to supervise such treatment. (4-26-95)

**d.** Clinical supervision must include a documented evaluation of the competencies of the members of the clinical staff, and a plan and activities which bring those competencies to proficiency. The evaluation will be conducted within one (1) month of initial hire and annually thereafter. Documentation of the evaluation and a record of improvement activities must be present in the staff personnel file.  
(11-1-01)T

**04. Sufficient Personnel Required.** The alcohol/drug program shall employ the number and variety of staff necessary to provide the services and treatments offered by the program as a multidisciplinary team. (4-26-95)

**a.** The program shall employ at least one (1) certified/ credentialed alcohol/drug counselor, or other qualified professional for each facility; or (4-5-00)

**b.** If the program arranges for the provision of counseling services, it shall have a valid written agreement or contract with a certified/credentialed alcohol/drug counselor. (4-26-95)

**c.** When qualified professionals are not available or needed on a full-time basis, arrangements shall be made to obtain qualified professionals on an attending, continuing consultative or part-time basis. (4-26-95)

**d.** Qualified administrative and support staff shall be sufficient in number and variety to support the operations of the program. (4-26-95)

**05. Certified Prevention Specialist.** By July 1, 2000, at least one (1) Certified Prevention Specialist shall be employed or under contract to supervise or coordinate and monitor prevention services provided directly or indirectly by the program. (4-5-00)

**06. JCAHO Accreditation.** The Department may approve programs with JCAHO accreditation with the following provisions: (4-5-00)

**a.** Organization chart with proof that staff meet minimum credential or certification standards; (4-5-00)

**b.** Criminal history checks; (4-5-00)

**c.** TB checks; and (4-5-00)

**d.** Payment of fee. (4-5-00)

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**(BREAK IN CONTINUITY OF SECTIONS)**

**074. DEPARTMENT REIMBURSEMENT SCHEDULE.**

Programs ~~shall~~ under contract with the Department will be reimbursed for treatment services in accordance with the Department's reimbursement schedule. The schedule is based on one hundred percent (100%) to one hundred seventy-five percent (175%) of the current Federal Poverty Guidelines adjusted for the number of persons in the family household unit. The Department's reimbursement of treatment program fees ranges from ninety-five percent (95%) to thirty percent (30%) in increments of ninety-five percent (95%), ninety percent (90%), eighty percent (80%), seventy percent (70%), sixty percent (60%), fifty percent (50%), forty percent (40%), thirty-five percent (35%), and thirty percent (30%) by income. The treatment program shall collect the client's share of the fee. The reimbursement schedule shall be updated with each revision of the Federal Poverty Guidelines. ~~(4-5-00)(11-1-01)T~~

**(BREAK IN CONTINUITY OF SECTIONS)**

**100. ADMISSION POLICIES AND PROCEDURES.**

All alcohol/drug abuse treatment programs shall have policies and procedures governing the admission process. These shall be available to clients and their families and to the general public. (4-26-95)

**01. Admission Policies.** The admission policies and procedures shall be in writing and shall specify the following: (4-26-95)

- a. Criteria for determining the eligibility of individuals for admission. (4-26-95)
- b. The information to be obtained on all applicants or referrals for admission. (4-26-95)
- c. The procedures for accepting referrals from outside agencies and organizations. (4-26-95)
- d. The records to be kept on all applicants. (4-26-95)
- e. The statistical data to be kept on the admission process. (4-26-95)
- f. The procedures to be followed, including alternative referrals, when an applicant is found ineligible for admission. (4-26-95)

**02. Methods Of Admission.** Methods of admission shall be based on the needs of clients as identified through a screening. (4-26-95)

- a. Screening is conducted prior to admission to treatment to determine if the client meets the admission criteria. (4-26-95)
- b. The screening is done by a qualified professional. (4-26-95)
- c. The results of the screening shall be clearly explained to the client, and family when appropriate. (4-26-95)

**03. Acceptance For Treatment.** Acceptance of a client for treatment shall be based on an admission procedure that assures the following: (4-26-95)

- a. The care provided by the program at that facility site is appropriate for the client and must be based on admission, continued stay and discharge criteria approved by the Department. ~~(4-26-95)(11-1-01)T~~
- b. Assessment data is collected to develop a preliminary treatment plan. (4-26-95)
- c. If the potential client is a minor or an incompetent person, a parent, legal guardian or other legal

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representative may make application for voluntary admission to treatment. (4-26-95)

**d.** No otherwise qualified individual is denied access to treatment services on the basis of race, color, ethnicity, religion, sex, veteran and handicap status. (4-26-95)

**04. Provisions For Persons Requiring Protective Custody.** For persons coming voluntarily or being brought by a law enforcement officer to an alcohol/drug abuse treatment program for protective custody, the program shall comply with the provisions of Section 39-307A, Idaho Code. (4-26-95)

**05. Assure Applicants Understand Rights And Responsibilities.** During the admission process, every effort shall be made to assure that applicants understand the following: (4-26-95)

**a.** The nature and goals of the treatment program. (4-26-95)

**b.** The hours during which services are available. (4-26-95)

**c.** The treatment costs to be borne by the client, if any. (4-26-95)

**d.** The rights and responsibilities of clients, including the rules governing client conduct and the types of infractions that can result in disciplinary action or discharge from the program. (4-26-95)

**06. Precautions.** Reasonable precautions shall be taken in all admissions to ensure the safety of the client, other clients and staff of the program and members of the community. (4-26-95)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **110. CLIENT RECORDS.**

All alcohol/drug treatment facilities shall meet the client records standards set forth in this section. (4-26-95)

**01. Written Client Record Required.** The alcohol/drug abuse treatment program shall maintain a written client record on each client. All entries in the client record shall be signed and dated. Symbols and abbreviations shall be used only if they have been approved by the professional staff and only when there is an explanatory legend. Symbols and abbreviations shall not be used in the recording of diagnoses. (4-26-95)

**a.** The client record shall describe the client's situation at the time of admission and include the services provided, all progress notes, and the client's status at the time of discharge. At a minimum the record shall contain: (4-26-95)

**i.** Identifying data recorded on standardized forms including the client's name, home address, home telephone number, date of birth, gender, marital status, race or ethnic origin, next of kin or person to contact, educational level, type and place of employment, date of initial contact or admission to the program, source of any referral, legal status including relevant legal documents, name of personal physician, record of any known drug reactions or allergies, and other identifying data as indicated. These forms shall be dated with the date the information was gathered and signed by the staff member gathering the information. (4-26-95)

**ii.** All assessments completed with the client shall be dated, signed by the person providing the assessment, and give a full accounting of the findings of such assessments. (4-26-95)

**iii.** Notes for each treatment session charting the client's progress. (4-5-00)

**iv.** All staffing notes pertaining to the client. (4-26-95)

**v.** All medical records regarding the client. These may include documentation of a medical examination, results of any medical tests, including urine tests performed by the program, and results of any medical

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tests reported to the program which were performed outside the program. (4-26-95)

vi. Documentation that justifies the client meets criteria for admission, continued stay and discharge. The documentation must be based on admission, continued stay and discharge criteria approved by the Department.  
(11-1-01)T

**b.** The client record shall contain information on any unusual occurrences, such as: (4-26-95)

i. Treatment complications. (4-26-95)

ii. Accidents or injuries to the client. (4-26-95)

iii. Serious illness. (4-26-95)

iv. Procedures that place the client at risk or cause unusual pain. (4-26-95)

v. Death of the client. In the event of a client's death, the person must be pronounced dead in accordance with the provisions of Idaho law and a summation statement shall be entered in the record in the form of a discharge summary. (4-26-95)

**c.** The client record shall contain correspondence concerning the client's treatment and signed and dated notations of telephone calls concerning the client's treatment. (4-26-95)

**d.** The client record shall contain a plan for aftercare. (4-26-95)

**e.** A discharge summary shall be entered in the client record within a reasonable period of time not to exceed fifteen (15) days following discharge, as determined by the professional staff and policies or standards. (4-26-95)

**02. Maintenance Of Client Records.** The executive director or designee shall maintain, control and supervise client records and is responsible for maintaining their quality in accordance with these standards. (4-26-95)

**a.** The active client's records shall be kept at the facility site where the client is being treated. (4-26-95)

**b.** Written policies and procedures govern the compilation, storage, dissemination and accessibility of client records. (4-26-95)

i. The policies and procedures shall be designed to assure that the program fulfills its responsibility to safeguard and protect client records against loss, unauthorized alteration or disclosure of information. (4-26-95)

ii. The policies and procedures shall be designed to assure that each client record contains all required information. (4-26-95)

iii. The policies and procedures shall be designed to assure uniformity in the format and forms used in client records. (4-26-95)

iv. The policies and procedures shall require entries in client records to be dated and signed. (4-26-95)

v. The program shall provide adequate facilities for the storage, processing and handling of client records, including suitably locked and secured rooms and files. (4-26-95)

vi. When a program stores client data in electronic or other types of automated information systems, adequate security measures shall prevent inadvertent or unauthorized access to such data. (4-26-95)

vii. Client records shall be maintained for a minimum of five (5) years from the date they are officially closed. (4-26-95)

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c. A written policy shall govern the disposal of client records. Methods of disposal shall be designed to assure the confidentiality of client information. (4-26-95)

**03. Confidentiality And Disclosure Of Information.** The program shall have written policies and procedures that protect the confidentiality of client records and govern the disclosure of information in the records. (4-26-95)

a. The policies and procedures shall specify the conditions under which information on applicants or clients may be disclosed and the procedures for releasing such information in accordance with public law. (4-26-95)

b. The program shall comply with federal regulations 42 CFR, Subchapter A, Part 2, regarding confidentiality of the records of alcohol and drug abuse clients. (4-26-95)

c. Nothing in any law or rule shall prevent the proper disclosure of information regarding child abuse, abandonment or neglect. Any suspected incidents of child abuse, abandonment or neglect shall be reported to the proper law enforcement agency or to the Department within twenty-four (24) hours in accordance with Idaho Child Protective Act, Section 16-1619 of the Idaho Code. (4-26-95)

### **(BREAK IN CONTINUITY OF SECTIONS)**

**1456. -- 149. (RESERVED).**

#### **146. DRUG COURT OUTPATIENT TREATMENT FACILITY.**

Alcohol/drug abuse programs seeking approval for this facility type must meet all standards set forth in Section 146, in addition to all other applicable rules and minimum standards in this chapter. (11-1-01)T

**01. Governing Body For The Drug Court Outpatient Treatment Facility.** A drug court outpatient treatment facility must have a governing body for the alcohol/drug abuse treatment program, which can be the local Drug Court Board. (11-1-01)T

a. The governing body must develop a written mission statement, goals and objectives that establish the program's philosophy and direction for treatment services. (11-1-01)T

b. The governing body must establish bylaws and administrative policies to guide relationships between itself and the responsible administrative and professional staffs and the community. Current copies of the bylaws and administrative policies must be readily available to all members of the governing body, the Department and other persons in accordance with their responsibilities or involvement in implementing the policies of the program. (11-1-01)T

**02. Staff Composition.** The alcohol/drug treatment program must have a sufficient number of treatment staff, qualified professionals, administrative and support staff to provide for the care and treatment of clients, in accordance with the standards set forth in Subsection 146.08.g. (11-1-01)T

a. Unless otherwise specified, programs providing treatment services must provide for the following supervisory staff: (11-1-01)T

i. The program must provide for a Program Administrator who is responsible for oversight of all services provided by the program. (11-1-01)T

ii. The program must provide for a Treatment Supervisor to provide on-site supervision at the treatment facility. The individual may supervise more than one (1) treatment activity. This position can also be the Clinical Director, Program Administrator, or both. In those instances where these positions are combined, standards must be met for all positions. (11-1-01)T

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iii. The program must provide for a Clinical Director who can be the same individual or position as the Program Administrator, Treatment Supervisor, or both. In those instances where these positions are combined, all standards must be met. The Clinical Director can be a single individual who will provide for statewide oversight of clinical activities but need not provide direct clinical supervision of staff. (11-1-01)T

b. Supervisory staff, which includes the Program Administrator, Treatment Supervisor and Clinical Director, must meet the qualifications listed in Subsection 050.02 of this rule. (11-1-01)T

**03. Application And Eligibility For Participation In A Drug Court Alcohol/Drug Treatment Program.** The local Drug Court Board and State Drug Court Coordinating Committee are responsible for developing policies and procedures for assessment and participation in a drug court alcohol/drug treatment program. (11-1-01)T

**04. Client Expectations.** Alcohol/drug abuse treatment programs must have written policies and procedures that specify client expectations of drug court treatment including: (11-1-01)T

a. Impartial access to treatment regardless of race, religion, gender, ethnicity, age or a disability that does not preclude participation in the alcohol/drug abuse treatment program. (11-1-01)T

b. Respect for personal dignity in the provision of all care and treatment. (11-1-01)T

c. Adequate and humane services, regardless of the source of financial support. (11-1-01)T

d. An individualized treatment plan, based on assessment of current needs. (11-1-01)T

e. Client access to their treatment plan. (11-1-01)T

f. What information will be shared and the nature of communications with members of the local drug court team. (11-1-01)T

**05. Client To Be Informed Of Expectations.** Each client must be informed of these expectations and sign a written statement of client expectations, which includes who the client may contact with questions, concerns or complaints regarding services provided. (11-1-01)T

**06. Admissions And Discharge Policies And Procedures.** The local Drug Court Board is responsible for developing policies and procedures governing the treatment admissions process which must include use of eligibility guidelines, the LSI-R, substance abuse assessments, program capacity, acceptance and appropriateness for treatment. The Board is also responsible for developing policies and procedures governing the treatment discharge process. (11-1-01)T

**07. Individualized Treatment Plan.** The alcohol/drug abuse treatment program must have a written, individualized treatment plan for each client that addresses the alcohol/drug abuse affects on the major life areas and is based on assessment of the client's clinical and criminogenic needs. (11-1-01)T

a. Overall responsibility for development and implementation of the treatment plan must be assigned to a qualified professional staff member. (11-1-01)T

b. Beginning with the completion of the assessment process, and within timeframes set by the local Drug Court Board, a detailed individualized treatment plan must be developed which meets the following requirements: (11-1-01)T

i. Specifies the services necessary to meet the client's needs. (11-1-01)T

ii. Includes referrals for needed services that the program does not provide. (11-1-01)T

iii. Contains specific goals that the client must achieve to reduce or eliminate alcohol or drug use. (11-1-01)T

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- iv. Contains specific objectives that relate to the goals, are written in measurable terms and includes expected achievement dates. (11-1-01)T
- v. Specifies the frequency of treatments. (11-1-01)T
- c. When appropriate, the client shall participate in the development of the treatment plan and such participation must be documented in the client's record. (11-1-01)T
- d. A specific plan for involving the family or significant others must be included when indicated. (11-1-01)T
- 08. Treatment Services Provided In A Drug Court Outpatient Treatment Facility.** (11-1-01)T
- a. Services in outpatient facilities must be provided at designated times. (11-1-01)T
- b. Counseling services must be provided through the outpatient program on an individual, family or group basis. (11-1-01)T
- c. The services must include educational instruction and written materials on the nature and effects of alcohol/drug use and abuse and the recovery process, as well as cognitive behavioral interventions to address the identified criminogenic needs. Substance abuse assessments must include the use of the LSI-R. (11-1-01)T
- d. The program must provide or refer to adjunct services as indicated by client need. (11-1-01)T
- e. Standards for group treatment must be present for the effective delivery of education, skill training and process groups and must specify the maximum number of participants allowed for each type of group. (11-1-01)T
- f. The drug court treatment program must provide supervision as follows: (11-1-01)T
- i. Qualified professionals will supervise all treatment activities. (11-1-01)T
- ii. Establish procedures for supervision of all clinical activities, which specify frequency and type of supervisory contact, and periodic client file reviews. (11-1-01)T
- g. There must be adequate, qualified staff to maintain appropriate client/staff ratios as set by the State Drug Court Coordinating Committee, and sufficient staff to provide necessary support to the professional staff. (11-1-01)T
- h. The program must employ at least one (1) certified/credentialed alcohol/drug counselor, or other qualified professional for each facility; or (11-1-01)T
- i. If the program arranges for the provision of counseling services, it must have a valid written agreement or contract with a certified/credentialed alcohol/drug counselor. (11-1-01)T
- ii. When qualified professionals are not available or needed on a full-time basis, arrangements must be made to obtain qualified professionals on an attending, continuing consultative or part-time basis. (11-1-01)T

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### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

**DOCKET NO. 16-0613-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-201 and 56-202(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change:

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July Administrative Bulletin, Volume 03-7, page 39.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mardell Nelson at (208) 334-5688.

DATED this 19th day of August, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
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450 West State Street - 10th Floor  
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### **IDAPA 16, TITLE 06, CHAPTER 13**

#### **RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, page 39.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**



## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

##### **DOCKET NO. 16-0613-0301 (CHAPTER REPEAL)**

#### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections, 56-201 and 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This entire chapter of rules is being repealed. The chapter is being rewritten and published under Docket No. 16-0613-0302 in this Bulletin following this notice.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because the temporary rule is necessary in order to comply with federal regulations in 45 CFR.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these are amendments to conform to federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Mardell Nelson at (208) 334-5688.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before July 23, 2003.

DATED this 22nd day of May, 2003.

Sherri Kovach  
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**IDAPA 16.06.13 IS BEING REPEALED IN ITS ENTIRETY**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

##### **DOCKET NO. 16-0613-0302 (CHAPTER REWRITE)**

##### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-201 and 56-202(b), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July Administrative Bulletin, Volume 03-7, pages 40 through 46.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Mardell Nelson at (208) 334-5688.

DATED this 19th day of August, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
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### **IDAPA 16, TITLE 06, CHAPTER 13**

#### **RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, pages 40 through 46.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN**

##### **DOCKET NO. 16-0613-0302 (CHAPTER REWRITE)**

##### **NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** These temporary rules are effective July 1, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections, 56-201 and 56-202(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than July 16, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This chapter of rules is being rewritten in order to bring the rules into compliance and to update and clarify federal regulations for Title IV-A funding. Language in the chapter will be reviewed and obsolete language removed as well as add sections to comply with IDAPA requirements.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because the temporary rule is necessary in order to comply with federal regulations in 45 CFR.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these are amendments to conform with federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Mardell Nelson at (208) 334-5688.

Anyone can submit written comments regarding this proposed rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before July 23, 2003.

DATED this 22nd day of May, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0613-0302**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16, TITLE 06, CHAPTER 13

#### 16.06.13 - RULES GOVERNING EMERGENCY ASSISTANCE FOR FAMILIES AND CHILDREN

**000. LEGAL AUTHORITY.**

The Idaho Department of Health and Welfare is authorized by the Idaho Legislature to adopt and enforce rules for the administration of the public assistance programs according to Sections 56-201, 56-202(b), Idaho Code, and Title IV-A of the Social Security Act. (7-1-03)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules will be IDAPA 16.06.13, "Rules Governing Emergency Assistance for Families and Children". (7-1-03)T

**02. Scope.** The purpose of these rules is to establish statewide provisions of emergency assistance to families with children or youth eligible to receive assistance through Title IV-A funds in order to meet the family's emergency conditions. (7-1-03)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201, Idaho Code, the Department has no written interpretations that apply to this chapter of rules. (7-1-03)T

**003. ADMINISTRATIVE APPEALS.**

Appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-03)T

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference in this chapter of rules. (7-1-03)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (7-1-03)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (7-1-03)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83720-0036. (7-1-03)T

**04. Telephone.** (208) 334-5500. (7-1-03)T

**05. Internet Website.** The Department's Internet website is found at: <http://www2.state.id.us/dhw/>. (7-1-03)T

**006. CONFIDENTIALITY OF RECORDS.**

Any disclosure of information obtained by the Department is subject to the restrictions of 45 CFR 205.50; Title 9, Chapter 3, Idaho Code; and IDAPA 16.05.01, "Use and Disclosure of Department Records". (7-1-03)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS AND ABBREVIATIONS.**

**01. Adult Relatives.** Any non-parent individual over the age of eighteen (18) years, who is related to

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**DEPARTMENT OF HEALTH AND WELFARE**  
**Emergency Assistance for Families and Children****Docket No. 16-0613-0302**  
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the eligible child in any of the following ways; brother, sister, aunt, uncle, nephew, niece, first cousin or first cousin once removed, or one (1) of these relationships prefixed by "grand" or "great," or one (1) of these relationships by half-blood; a step-parent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended.

(7-1-03)T

**02. Authorization Assessment.** A standardized assessment conducted by the Department within the first thirty (30) days following the date of application for emergency assistance.

(7-1-03)T

**03. Child.** A person from birth to his eighteenth birthday.

(7-1-03)T

**04. Child Protection Services.** Authorities to whom an individual reports the potential, alleged or actual abuse, abandonment or neglect of a child, in accordance with the provisions of Title 16, Chapter 16, Idaho Code, known as the "Child Protective Act".

(7-1-03)T

**05. Department.** The Idaho Department of Health and Welfare, or its designee.

(7-1-03)T

**06. Designated Staff.** Department staff who provide direct services to families and children.

(7-1-03)T

**07. Emergency Assistance.** Funding through Title IV-A for social services, emergency payments, and placement payments authorized by the Department and designed to meet short-term, non-recurrent emergency needs of families with children.

(7-1-03)T

**08. Federal Poverty Guideline.** Poverty guidelines issued each year in the Federal Register by the Department of Health and Human Services used to determine financial eligibility for certain state and federal programs. These guidelines may be accessed at the Internet website "<http://aspe.os.dhhs.gov/poverty/>".

(7-1-03)T

**09. Needy Family.** Two hundred percent (200%) of poverty as defined in the Federal Poverty Guidelines, or insufficient resources immediately available to meet the child's basic needs and which threatens the child's safety, stability, or well-being.

(7-1-03)T

**10. Respite Care.** Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual caregiver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days.

(7-1-03)T

**11. Service Period.** Is the thirty (30) day authorization assessment period and up to ninety (90) days following the assessment period.

(7-1-03)T

**12. Youth.** A person between eighteen (18) years of age and his twenty-first birthday.

(7-1-03)T

**011. -- 099. (RESERVED).**

### **100. EMERGENCY CONDITION.**

**01. Reporting Or Referral Of An Emergency Condition.** A family is assessed for an emergency condition when the Department receives a report, referral or service request indicating an emergency condition exists as described in Subsection 100.02 of these rules.

(7-1-03)T

**02. Emergency Condition.** A family has an emergency condition when any of the following exists:

(7-1-03)T

**a.** A child is in immediate danger of a life-threatening or emergency situation. See IDAPA 16.06.01, "Rules Governing Family and Children's Services," Subsection 554.01.

(7-1-03)T

**b.** A child is suspected of being abused, including physical or sexual, or serious physical or medical neglect has been reported. See IDAPA 16.06.01, "Rules Governing Family and Children's Services," Subsection 554.01.

(7-1-03)T

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c. A child is in a vulnerable situation because of the lack of parental care or insufficient resources immediately available to meet his basic needs and the unmet needs may be a threat to the child's health, safety, stability, or well-being. (7-1-03)T

**101. -- 149. (RESERVED).**

### **150. APPLICATION FOR SERVICES.**

**01. To Apply For Emergency Assistance.** An application must be completed and signed by one (1) of the following individuals on behalf of the eligible child in order for emergency assistance to be given: (7-1-03)T

a. A parent or parents. (7-1-03)T

b. An adult relative may sign on behalf of the child, when the child is residing with him and he is responsible for the child's care. (7-1-03)T

c. Designated staff may sign the application on behalf of a child in the legal custody of the Department. The Department must notify the family of the emergency assistance funding being used because the expenditure will affect the family's eligibility for emergency assistance benefits for a twelve-month period from the date the application is signed. (7-1-03)T

d. A youth, who has lived with a parent or relative within six (6) months prior to the month of the application, may sign the application on his own behalf. (7-1-03)T

**02. Individual Not Related To The Child.** Except as stated in Subsection 150.01.c. of these rules, an individual not related to the child may not apply for emergency assistance on behalf of the child. (7-1-03)T

**151. -- 159. (RESERVED).**

### **160. ELIGIBILITY REQUIREMENTS.**

The following requirements in Subsections 160.01 through 106.05 of these rules must be met before a family is eligible for emergency assistance. (7-1-03)T

**01. Child Or Youth.** There must be a child or youth in the household for the family to be eligible. (7-1-03)T

**02. Citizenship.** To be eligible for emergency assistance an individual must meet the citizenship requirements in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families in Idaho," Section 131. (7-1-03)T

**03. Income Guidelines.** The family is determined as needy when the household income is below two hundred percent (200%) of the current Federal Poverty Guideline or is unable to meet the emergency condition because of circumstances beyond their control. When both parents are absent, refuse to cooperate in supporting the child or youth and are unwilling to apply on his behalf, his income alone is considered. (7-1-03)T

**04. Residence.** The child or youth must have lived with one (1) or both parents or an adult relative, within six (6) months prior to the month of application for emergency assistance. A child or youth may move from one (1) household to another and be eligible to receive emergency assistance in either household. 7-1-03)T

**05. Work Program Compliance.** An individual who is required to participate in a work program must not have refused, without good cause, to accept employment or training for employment. (7-1-03)T

**161. -- 199. (RESERVED).**

### **200. ASSESSMENT AND AUTHORIZATION FOR EMERGENCY ASSISTANCE.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**01. Authority To Assess Needs For Emergency Assistance.** Contractors may conduct assessments and make referrals for authorization. (7-1-03)T

**02. Authority To Authorize Emergency Assistance.** Emergency assistance payments and services may only be authorized by the Department's designated staff. (7-1-03)T

**03. Authorization And Assessment Period.** The thirty-day authorization and assessment period begins the date the applicant signs the application. Services may be provided during this authorization and assessment period. (7-1-03)T

**04. Service Period.** A service period may continue for a maximum of ninety (90) days following the assessment period in Subsection 200.03 of these rules. (7-1-03)T

**05. Total Number Of Days For Emergency Assistance.** The total number of days a family may receive emergency assistance is one hundred twenty (120) consecutive days in a twelve-month period from the date the application is signed. (7-1-03)T

**06. Assessment Content.** The Department or its designee must describe in the assessment the following: (7-1-03)T

**a.** The emergency condition; (7-1-03)T

**b.** The family's issues which caused the emergency condition; and (7-1-03)T

**c.** A family service plan. (7-1-03)T

**07. Family Service Plan Content.** The Department or its designee must develop a family service plan that has been signed by the applicant. The plan must include a description of the following: (7-1-03)T

**a.** The types of services and the reason the services are needed; (7-1-03)T

**b.** The specific period each service will be covered; (7-1-03)T

**c.** Who is providing the service; (7-1-03)T

**d.** A list of resources and contacts made on behalf of the family; and (7-1-03)T

**e.** How the needs of the family will be met in the future. (7-1-03)T

**201. -- 209. (RESERVED).**

### **210. DURATION FOR EMERGENCY ASSISTANCE.**

Emergency assistance may be provided to a family one (1) time during a twelve-month period counted from the date the application is signed, unless the original application was denied or withdrawn. The emergency assistance can not exceed a total of one hundred and twenty (120) consecutive days. (7-1-03)T

**01. Subsequent Emergency Conditions.** (7-1-03)T

**a.** If more than one (1) emergency condition occurs within the thirty-day authorization assessment period, all emergency conditions are considered to be the same emergency and additional funds may be authorized to cover additional services needed. (7-1-03)T

**b.** If a second emergency condition occurs after the thirty-day authorization assessment period, it is considered a separate emergency condition and emergency assistance can not be used to provide services or payment of additional funds (7-1-03)T

**02. Out-Of-Home Placement For Child.** If the Department places a child in out-of-home care and

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pays for the placement with emergency assistance funds, the family's emergency assistance benefit for the following twelve (12) months is used from the date the application is signed. (7-1-03)T

**211. -- 299. (RESERVED).**

**300. EMERGENCY ASSISTANCE PAYMENTS.**

Emergency assistance payments are non-recurrent, short-term benefits for specific emergency conditions that are provided to assist a family with an eligible child or youth. These payments are not intended to meet ongoing and recurrent needs that will extend beyond the one hundred twenty-day service period. (7-1-03)T

**01. Emergency Payments.** Emergency payments will be made to purchase goods and services relating to the emergency condition. (7-1-03)T

**02. Placement Payments.** Placement payments may be made for shelter care, foster care, residential or group care for a child and may include food, clothing and supervision unless the child has assistance provided under Title IV-E funding. (7-1-03)T

**03. Non-Allowable Payments.** Emergency assistance funds may not be used to pay for the following: (7-1-03)T

**a.** Medical services reimbursable by Medicaid regardless of whether the individual is receiving or eligible for Medicaid. (7-1-03)T

**b.** Services provided to meet a family's on going basic needs including housing, food, clothing, transportation and household goods that extend beyond the one hundred twenty (120) days. (7-1-03)T

**c.** Services available through other community resources. (7-1-03)T

**d.** Child care that is not considered respite care. (7-1-03)T

**e.** Medical or automobile insurance. (7-1-03)T

**f.** Down payment or purchases of vehicles or real property. (7-1-03)T

**04. Funding Restrictions.** The Department may take action to reduce emergency assistance payments when available funding is insufficient. (7-1-03)T

**301. -- 399. (RESERVED).**

**400. CHILD WELFARE SOCIAL SERVICES.**

**01. Child Welfare Social Services.** Designated staff may provide services to families with an emergency condition as described in Subsections 100.02.a. and 100.02.b. of these rules. The types of services that may be provided are: (7-1-03)T

**a.** Information and referrals; (7-1-03)T

**b.** Service coordination; (7-1-03)T

**c.** Court-related activities; (7-1-03)T

**d.** Intensive in-home services; (7-1-03)T

**e.** Day treatment; (7-1-03)T

**f.** Counseling; (7-1-03)T



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**DEPARTMENT OF HEALTH AND WELFARE**  
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- g.** Companion services; (7-1-03)T
- h.** Non-residential substance abuse treatment; (7-1-03)T
- i.** Community-based assessments; and (7-1-03)T
- j.** Respite and shelter care. (7-1-03)T

**02. Additional Services.** Additional services may be purchased to meet the needs related to the family's emergency condition as described in Subsections 100.02.a. and 100.02.b. of these rules, in order to avoid out-of-home placement for the child or to expedite family reunification. (7-1-03)T

**401. -- 409. (RESERVED).**

**410. CHILD WELFARE EMERGENCY ASSISTANCE PROGRAM ADMINISTRATION.**

**01. Assistance Program.** Designated staff will engage in activities incidental and necessary for the proper and efficient administration of the child welfare emergency assistance program relating to families who meet emergency conditions described in Section 100 of these rules. (7-1-03)T

**02. Administrative Duties.** Administrative duties will include the following: (7-1-03)T

- a.** Complete the eligibility process including receiving reports and referrals indicating emergency conditions, taking applications, and any documentation necessary to administer the emergency assistance program. (7-1-03)T
- b.** Complete risk assessments; (7-1-03)T
- c.** Court-related activities as needed; (7-1-03)T
- d.** Develop family plans to help stabilize the family by authorizing needed services; (7-1-03)T
- e.** Make payments, complete reporting and documentation required to provide services for the emergency conditions of the family; (7-1-03)T
- f.** Provide training to Department staff and service providers; and (7-1-03)T
- g.** Provide other administrative activities as needed. (7-1-03)T

**411. -- 999. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

#### **16.06.14 - RULES GOVERNING THE PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS**

**DOCKET NO. 16-0614-0201**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) Title 39, Chapter 57, Idaho Code and 42 U.S.C. 300x - 26, 45 C.F.R., 96.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the December 4, 2002 Administrative Bulletin, Volume 02-12, pages 143 through 146.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Terry Pappin at (208) 334-6542.

DATED this 9th day of January, 2003.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
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#### **IDAPA 16, TITLE 06, CHAPTER 14**

#### **RULES GOVERNING THE PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-12, December 4, 2002, pages 143 through 146.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

#### 16.06.14 - RULES GOVERNING THE PREVENTION OF MINORS' ACCESS TO TOBACCO PRODUCTS

DOCKET NO. 16-0614-0201

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is October 1, 2002.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Title 39, Chapter 57, Idaho Code and 42 U.S.C. 300x -26, 45 C.F.R. 96, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**December 9, 2002, at 7:00 p.m.**  
Owyhee Room, Vista Inn  
2645 Airport Way, Boise

**December 11, 2002, at 7:00 p.m.**  
Ameritel Inn  
645 Lindsay Blvd., Idaho Falls

**December 17, 2002, at 7:00 p.m.**  
Eagle East Room, Ameritel Inn  
333 Ironwood, Coeur d'Alene

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This rule change provides the Department with the ability to refuse to renew a retailer's tobacco sales permit when the retailer has unpaid civil money penalties for violations on the permit. A permit would be issued when the fine is paid in full. This rule adjusts the date used to determine the number of permits or retailers from January 1st of each year to December 31st of the previous year. This will provide the most accurate accounting of active retail permits during the prior year.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

**TEMPORARY RULE JUSTIFICATION:** Temporary rules have been adopted in accordance with Section 67-5226(1)(a), Idaho Code and are necessary in order to protect public health.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because time constraints did not allow for negotiated rule making. However, the Department is holding public hearings on this rule change.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary or proposed rule, contact Decker Sanders at (208) 334-5934.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before December 25, 2002.

DATED this 10th day of October, 2002.

Sherri Kovach  
Administrative Procedures Coordinator  
DHW – Administrative Procedures Section  
450 West State Street, 10th Floor  
P.O. Box 83720, Boise, Idaho 83720-0036  
(208) 334-5564 phone, (208) 332-7347 fax  
kovachs@idhw.state.id.us e-mail

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0614-0201

#### 020. APPLICATION FOR PERMIT.

All businesses which sell or distribute tobacco products to the public must obtain a permit issued annually for no charge by the Department of Health and Welfare. (4-5-00)

**01. Where To Obtain An Application For Permit.** An application can be obtained, at no cost to the applicant, from the Department of Health and Welfare, Division of Family and Community Services, PO Box 83720, Boise, Idaho, 83720-0036, ~~at no cost to the applicant~~. Application may be made through online services where available. ~~(3-15-02)~~(10-1-02)T

**02. Separate Permits.** A separate permit must be obtained for each place of business. The permit is non-transferable to another person, business, or location. (3-15-02)

**03. Renewal Of Permit.** All permits must be renewed annually and are valid for twelve (12) calendar months. (4-5-00)

**a.** The Department will mail notices of renewal for permits no later than ninety (90) days prior to the expiration date on the permit. (4-5-00)

**b.** An application for renewal must be submitted annually by each business through written application or online services where available. (3-15-02)

**c.** A business with multiple sites may submit a single written application to renew the permit at each site, so long as the application is accompanied by a list of business locations and addresses. (3-15-02)

**d.** A permit will not be renewed for any location until any past due fines for violations are paid in full. Fines are considered past due when not paid within ten (10) days of the citation date, or within ten (10) days after notification that the fine is upheld upon appeal. Violation fines under appeal are not considered past due. (10-1-02)T

**04. Application For Exemption.** Businesses seeking exemption from vendor assisted sales ~~shall~~ must submit information to the Department to establish compliance with criteria set forth in Subsections 007.14.a. through 007.14.c. ~~(4-5-00)~~(10-1-02)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 101. INSPECTIONS.

**01. Random And Unannounced Inspections.** The total number of random and unannounced inspections under Section 101 shall be determined by: (3-15-02)

**a.** The number of permittees on the ~~first~~ last day of each year multiplied by the percentage of violations for the preceding year multiplied by a factor of ten (10). A calculation checklist is provided under Appendix B; ~~(3-15-02)~~(10-1-02)T

**b.** In no instance shall the total number of inspections be less than the number of permittees, or exceed twice the number of permittees. (3-15-02)

**c.** The Department and the Idaho State Police ~~shall~~ must conduct at least one (1), unannounced inspection per year at every known business location identified as a retailer of tobacco products to the public. All additional inspections required to meet the total number specified under Section 101 shall be conducted in a random

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

manner.

~~(3-15-02)~~(10-1-02)T

**02. Who Will Inspect.** Inspections will be conducted by an adult enforcement officer accompanied by a minor. (4-5-00)

**03. Law Enforcement Agency Inspections.** (4-5-00)

**a.** In addition to the inspections set forth in Subsection 101.01, any law enforcement agency may conduct inspections consistent with agency policy and procedure with or without a minor at any business location, at any time, where tobacco products are sold or distributed to the public. (3-15-02)

**b.** Law enforcement agencies conducting inspections under Subsection 101.03.a. will report the results from their inspections to the Department. All citations will become part of the permittee's permanent record. (3-15-02)

**04. Complaint Investigation.** (3-15-02)

**a.** The Department ~~shall~~ **must** refer all written complaints concerning the sale of tobacco products to minors to the appropriate agency for investigation. Investigation activities include, but are not limited to, inspections to determine the compliance with this chapter. ~~(3-15-02)~~(10-1-02)T

**b.** Inspections conducted as part of the investigation of a written complaint are not included in the overall number of inspections identified under Subsections 101.01 and 101.03. Citations issued during the investigation of a written complaint ~~shall~~ **must** be added to the permittee's permanent record. ~~(3-15-02)~~(10-1-02)T

**05. Issuance Of Citation Or Report.** (4-5-00)

**a.** For inspections conducted under Subsection 101.01 a representative of the business will be provided with a report, within two (2) business days, after the inspection was conducted and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the random unannounced inspection. (3-15-02)

**b.** For inspections conducted under Subsections 101.03 and 101.04, a representative of the business will be provided with a report, within two (2) business days, after the result of the inspection is received by the Department and no violations were found, or a representative of the business will be issued a citation within two (2) business days after the result of the inspection is received by the Department. The date the Department provides notification of the citation ~~shall~~ **must** be used for determination of timely payment of fines and all other administrative actions including requests for waivers and request for appeals. ~~(3-15-02)~~(10-1-02)T

**(BREAK IN CONTINUITY OF SECTIONS)**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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DEPARTMENT OF HEALTH AND WELFARE  
Prevention of Minors' Access to Tobacco Products

Docket No. 16-0614-0201  
Temporary and Proposed Rulemaking

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### APPENDIX B

#### RANDOM AND UNANNOUNCED INSPECTION CHECKLIST

Inspection Year \_\_\_\_\_

1. Number of Permittees as of ~~January~~ December 31, 20\_\_\_\_: \_\_\_\_\_

Multiplied by:

2. Overall Violation Rate for Prior Year (20\_\_) (Percentage) \_\_\_\_\_x\_\_\_\_.

3. Multiplied by 10: \_\_\_\_\_

4. Total of Random and Unannounced Inspections: \_\_\_\_\_

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 19 - BOARD OF DENTISTRY**

#### **19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY**

**DOCKET NO. 19-0101-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-912(4) and 54-924(8), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The proposed rulemaking is for the following purposes: to incorporate the American Dental Association's Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code) into the Board of Dentistry's administrative rules by reference; to specify that a violation of the ADA Code by a dentist constitutes unprofessional conduct; to specifically identify the six (6) areas of specialty dental practice recognized and licensed by the Board of Dentistry; to provide that false, fraudulent and misleading advertising by dentists and dental professionals is prohibited as unprofessional conduct; to define the terms advertisement and advertising; to specify types of advertising that will be considered to be false, fraudulent and misleading to the public; and to provide that false, fraudulent and misleading advertising may result in disciplinary action by the Board of Dentistry against a dentist's or dental specialist's license. In response to public comments received, the text of the proposed rule is being changed in order to expressly state that the standards of the ADA Code will only be applicable to dentists. That change is being published in this Bulletin following this notice.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 331 through 336.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 5th day of November, 2003.

Michael J. Sheeley, Executive Director  
Idaho State Board of Dentistry  
708½ W. Franklin Street  
Boise, Idaho 83702  
(208) 334-2369 (telephone)  
(208) 334-3247 (facsimile)

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#### **IDAPA 19, TITLE 01, CHAPTER 01**

#### **RULES OF THE IDAHO STATE BOARD OF DENTISTRY**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 331 through 336.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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*Language That Has Been Deleted From The Original Proposed Rule  
Has Been Removed And New Language Is Shown In Italics*

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THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 19-0101-0301

### ***SUBSECTION 040.24 (Partial Section)***

#### **040. UNPROFESSIONAL CONDUCT (Rule 40).**

A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (7-1-93)

**24. American Dental Association Compliance.** *Failure by a dentist to comply with the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), as incorporated by reference in this chapter.* ( )



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 19 - BOARD OF DENTISTRY

#### 19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

##### DOCKET NO. 19-0101-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 54-912(4) and 54-924(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rulemaking is for the following purposes: to incorporate the American Dental Association's Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code) into the Board of Dentistry's administrative rules by reference; to specify that a violation of the ADA Code constitutes unprofessional conduct; to specifically identify the six (6) areas of specialty dental practice recognized and licensed by the Board of Dentistry; to provide that false, fraudulent and misleading advertising by dentists and dental professionals is prohibited as unprofessional conduct; to define the terms advertisement and advertising; to specify types of advertising that will be considered to be false, fraudulent and misleading to the public; and to provide that false, fraudulent and misleading advertising may result in disciplinary action by the Board of Dentistry against a dentist's or dental specialist's license.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Notice of the proposed rulemaking was previously provided to interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 14th day of August, 2003.

Michael J. Sheeley, Executive Director  
Idaho State Board of Dentistry  
708½ W. Franklin Street  
Boise, Idaho 83702  
(208) 334-2369 (telephone)  
(208) 334-3247 (facsimile)

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 19-0101-0301

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**004. INCORPORATION BY REFERENCE (Rule 6).**

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

**01. Documents.** (7-1-93)

**a.** American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 6th Edition, 2000. (3-15-02)

**b.** American Dental Association, Council on Dental Education, Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, October 2000. (3-15-02)

**c.** American Dental Association, Council on Dental Education, Guidelines for Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists, October 2000. (3-15-02)

**d.** American Dental Association, Infection Control Recommendations for the Dental Office and the Dental Laboratory, JADA, August 1992. (7-1-93)

**e.** Centers for Disease Control, Recommended Infection Control Practice for Dentistry, 1993. (3-18-99)

**f.** American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2003 (as amended). ( )

**02. Availability.** These documents are available for public review at the Idaho State Board of Dentistry, 708 1/2 West Franklin Street, Boise, Idaho 83720, or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. (3-15-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. UNPROFESSIONAL CONDUCT (Rule 40).**

A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: (7-1-93)

**01. Fraud.** Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

**02. Unlicensed Practice.** Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

**03. Unlawful Practice.** Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

**04. Dividing Fees.** A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

**a.** The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

**b.** The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

**05. Controlled Substances.** Prescribing or administering controlled substances not reasonably

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**BOARD OF DENTISTRY**  
**Rules of the Idaho State Board of Dentistry**

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**Docket No. 19-0101-0301**  
**Proposed Rulemaking**

necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

**06. Harassment.** The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

**07. Discipline In Other States.** Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

**08. Altering Records.** Alter a patient's record with intent to deceive. (7-1-93)

**09. Office Conditions.** Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Subsections 006.01.c. and 006.01.d. (7-1-93)

**10. Abandonment Of Patients.** Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

**11. Use Of Intoxicants.** Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

**12. Mental Or Physical Illness.** Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

**a.** Mental illness; (7-1-93)

**b.** Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

**13. Consent.** Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)

**14. Scope Of Practice.** Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)

**15. Delegating Duties.** Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)

**16. Unauthorized Treatment.** Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)

**17. Supervision.** Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)

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### BOARD OF DENTISTRY Rules of the Idaho State Board of Dentistry

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**18. Legal Compliance.** Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing the practice of dentistry. (3-18-99)

**19. Exploiting Patients.** Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)

**20. Misrepresentation.** Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)

**21. Disclosure.** Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)

**22. Sexual Misconduct.** Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)

**23. Patient Management.** Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)

**24. American Dental Association Compliance.** Failure to comply with the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), as incorporated by reference in this chapter. ( )

**041. -- 044. (RESERVED).**

#### **045. LICENSURE OF DENTAL SPECIALISTS (Rule 45).**

**01. Qualifications.** Each applicant shall have a general license for the practice of dentistry in the state of Idaho or another state. Any applicant who desires to be licensed in one (1) of the Board recognized specialties, which include and are limited to Endodontics, Oral and Maxillofacial Surgery, Orthodontics, Pediatric Dentistry, Periodontics, and Prosthodontics, must be a graduate of and hold a certificate from both a dental school and a Graduate Training Program that ~~is~~ are accredited by the Commission on Dental Accreditation of the American Dental Association. Any dentist licensed in Idaho who has met the educational requirements and standards approved by the Board, and who has practiced in ~~an American Dental Association~~ Board recognized specialty prior to February 1, 1992, may be granted a specialty license by the Board without undergoing examination. (3-18-99)( )

**02. Application.** Application for license to practice a recognized dental specialty must be filed in the office of the Board of Dentistry, Statehouse Mail, Boise, Idaho. The application must be attested before a notary public. (7-1-93)

**03. Examination.** Specialty licensure in those specialties recognized ~~by the American Dental Association~~ may be granted solely at the discretion of the Idaho State Board of Dentistry. An examination covering the applicant's chosen field may be required and, if so, will be given by the Idaho State Board of Dentistry or its agent. Candidates who are certified by the American Board of that particular specialty as of the date of application for specialty licensure, and who meet the qualifications set forth in the Board's Rules, may be granted specialty licensure by Board approval. (4-2-03)( )

**04. ~~Advertising And~~ Limitation Of Practice.** No dentist shall announce or otherwise hold himself out to the public as a specialist unless he has first complied with the requirements established by the Idaho State Board of Dentistry for such specialty and has been issued a specialty license authorizing him to do so. ~~The issuing of a specialty license allows him to announce to the public that he is specially qualified in a particular branch of dentistry.~~ Any individual granted a specialty license must limit his practice to the specialty(s) in which he is licensed. (7-1-93)( )

#### **046. ADVERTISING (Rule 46).**

Dentists and dental hygienists licensed to practice in Idaho may advertise in any medium or by other form of public communication so long as any such advertising is not false, deceptive, misleading or not readily subject to

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BOARD OF DENTISTRY Rules of the Idaho State Board of Dentistry

Docket No. 19-0101-0301  
Proposed Rulemaking

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verification. In addition to any other applicable grounds, a violation of this advertising rule shall constitute and be considered as unethical and unprofessional conduct pursuant to the Idaho Dental Practice Act and this chapter.

( )

#### **01. General Advertising Provisions.**

( )

**a.** "Advertisement" shall mean any public communication, made in any form or manner whatsoever, about a licensee's professional services or qualifications for the purpose of soliciting business. "Advertising" or "advertise" shall mean holding out, broadcasting, mailing, publishing, transmitting, announcing, distributing or otherwise disseminating any advertisement, whether directly or indirectly through the efforts of another person or entity. Any sign soliciting business, whether at the location of the dental practice or otherwise, shall be considered as an advertisement. A licensee who engages or authorizes another person or entity to advertise for or on the licensee's behalf is responsible for the content of the advertisement unless the licensee can prove that the content of the advertisement was contrary to the licensee's specific directions.

( )

**b.** If the form or manner of advertising consists of or contains verbal communication to the public by television, radio, or other means, the advertisement shall be prerecorded and approved for broadcast by the licensee and a recording of the actual advertisement shall be retained by the licensee for a period of two (2) years. Upon receipt of a written request from the Board, a licensee shall provide any such recorded advertisement to the Board within five (5) working days.

( )

**c.** Any advertisement made under or by means of a fictitious or assumed business name or in the name of a professional service corporation shall be the responsibility of all licensees who are owners of the business or corporation.

( )

**02. Prohibited Advertising.** A licensee shall not advertise in any form or manner which is false, misleading or deceptive to the public or which is not readily susceptible to verification. False, misleading or deceptive advertising or advertising that is not readily susceptible to verification includes, but is not limited to, advertising that:

( )

**a.** Makes a material misrepresentation of fact or omits a material fact;

( )

**b.** Makes a representation likely to create an unjustified expectation about the results of a dental procedure;

( )

**c.** Compares a licensee's services with another licensee's services unless the comparison can be factually substantiated;

( )

**d.** Makes a representation that is misleading as to the credentials, education, or the licensing status of a licensee;

( )

**e.** Represents that the benefits of a dental insurance plan will be accepted as full payment when deductibles or copayments are required;

( )

**f.** Makes a representation that is intended to take advantage of the fears or emotions of a particularly susceptible type of patient; and

( )

**g.** Refers to benefits of dental procedures or products that involve significant risks without including realistic assessments of the safety and efficacy of those procedures or products.

( )

**03. Specialty Advertising.** The Board recognizes and licenses the following specialty areas of dental practice: Endodontics; Oral and Maxillofacial Surgery; Orthodontics; Pediatric Dentistry; Periodontics; and Prosthodontics. The specialty advertising rules are intended to allow the public to be informed about recognized dental specialties and specialization competencies of licensees and to require appropriate disclosures to avoid misperceptions on the part of the public.

( )

**a.** An advertisement shall not state that a licensee is a specialist, or specializes in a recognized

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specialty area of dental practice, or limits his practice to any recognized specialty area of dental practice unless the licensee has been issued a license or certification in that specialty area of dental practice by the Board. Use of words or terms in advertisements such as "Endodontist," "Pedodontist," "Pediatric Dentist," "Periodontist," "Prosthodontist," "Orthodontist," "Oral and Maxillofacial Surgeon," "Oral Surgeon," "Specialist," "Board Certified," "Diplomate," "Practice Limited To," and "Limited To Specialty Of" shall be prima facie evidence that the licensee is announcing or holding himself out to the public as a specialist or that the licensee specializes in a recognized area of dental practice. ( )

**b.** A licensee who has not been licensed or certified by the Board in a recognized specialty area of dental practice may advertise as being qualified in a recognized specialty area of dental practice so long as each such advertisement, regardless of form, contains a prominent disclaimer that the licensee is "licensed as a general dentist" or that the specialty services "will be provided by a general dentist". Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. ( )

**c.** A licensee shall not advertise as being a specialist in or as specializing in any area of dental practice which is not a Board recognized and licensed specialty area unless the advertisement, regardless of form, contains a prominent disclaimer that the advertised area of dental practice is not recognized as a specialty area of dental practice by the Idaho Board of Dentistry. Any disclaimer in a written advertisement shall be in the same font style and size as that in the listing of the specialty area. ( )

**0467. -- 049. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.06.01 - RULES GOVERNING THE BOARD OF HEARING AID DEALERS AND FITTERS**

**DOCKET NO. 24-0601-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2914, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 403 through 406.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 06, CHAPTER 01**

#### **RULES GOVERNING THE BOARD OF HEARING AID DEALERS AND FITTERS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 403 through 406.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

#### 24.06.01 - RULES GOVERNING THE BOARD OF HEARING AID DEALERS AND FITTERS

DOCKET NO. 24-0601-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 54-2914, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Adds required sections; clarifies application fees and license fees currently being assessed; clarifies continuing education requirements; and amends sound field testing requirement.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes made are not controversial.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August, 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0601-0301

~~002: (RESERVED):~~



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES Rules of the Board of Hearing Aid Dealers and Fitters

Docket No. 24-0601-0301  
Proposed Rulemaking

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**0032. WRITTEN INTERPRETATIONS (Rule 32).**

The board may have written statements ~~which~~ that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (7-1-93)( )

**003. ADMINISTRATIVE APPEALS (Rule 3).**

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ( )

**004. INCORPORATION BY REFERENCE (Rule 4).**

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. ( )

**005. ADDRESS OF IDAHO BOARD OF HEARING AID DEALERS AND FITTERS (Rule 5).**

The office of the Board of Hearing Aid Dealers and Fitters is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is had@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/had. ( )

**006. PUBLIC RECORDS (Rule 6).**

The records associated with the Board of Hearing Aid Dealers and Fitters are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

**0047. -- 009. (RESERVED).**

**010. DEFINITIONS (Rule 10).**

**01. Board.** The Board of Hearing Aid Dealers and Fitters as prescribed in Section 54-2901, Idaho Code. (7-1-93)

**02. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-2914 and 67-2602, Idaho Code. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

**150. FEES (Rule 150).**

**01. ~~Application~~ Original License Fee.** ~~Application~~ The original license ~~F~~fee is two hundred fifty dollars (\$250) to be accompanied by the completed application. (Also includes examination when required.) (7-1-93)( )

**02. Examination Fee.** Examination ~~F~~fee is two hundred fifty dollars (\$250). (7-1-93)( )

**03. Reexamination Fee.** Reexamination ~~F~~fee is two hundred fifty dollars (\$250). (7-1-93)( )

**04. Temporary Permit.** Temporary ~~P~~permit ~~F~~fee is two hundred fifty dollars (\$250). (7-1-93)( )

**05. Temporary Permit Reissue Fee.** Temporary ~~P~~permit ~~R~~reissue ~~F~~fee is two hundred fifty dollars (\$250). (7-1-93)( )

**06. Annual Renewal Fee.** Annual ~~R~~renewal ~~F~~fee is ~~two hundred fifty dollars (\$250) for fiscal years 1994 and 1995; One hundred fifty dollars (\$150) beginning with fiscal year 1996 and on.~~ (7-1-93)( )

**07. Reciprocity Fee.** Reciprocity ~~F~~fee is two hundred fifty dollars (\$250). (7-1-93)( )

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 250. ~~ORIGINAL~~ LICENSE EXPIRATION (Rule 250).

01. **Original Licenses** ~~Issued Subject To The May Exam.~~ All original ~~licenses issued subject to the May examination~~ shall expire ~~June 30th of~~ on the anniversary of the licensee's birth date in the year following the year of issue. (7-1-93)( )

02. ~~Licenses Issued Subject To Any Other Exam.~~ Licenses issued subject to any other examination shall expire the following June 30th. **Term of License.** All license renewals shall be for a period of twelve (12) months in accordance with Section 67-2614, Idaho Code. (7-1-93)( )

03. ~~Original License Issued Other Than By Regularly Scheduled Exam.~~ In the event an original license is issued other than subject to the regularly scheduled examinations the license shall expire the following June 30th. (7-1-93)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 300. CONTINUING EDUCATION REQUIREMENTS (Rule 300).

01. **Number Of Hours Required.** Eight contact (8 CEU's) hours of Continuing Education is required annually for license renewal. Verification of minimum of eight (8) hours of continuing education during the twelve (12) months prior to license renewal shall be sent with the annual license renewal fee. (7-1-93)

02. **Classes/Workshops Accepted.** Only classes and/or workshops approved for continuing education credits by National Institute for Hearing Instruments Studies (NIHIS) or American Speech-Language-Hearing Association (ASHA) will be accepted. (7-1-93)

03. ~~Effective Date.~~ This rule shall go into effect July 1, 1989, with verification of continuing education required for renewal in 1990 and each subsequent year. **Documentation.** Licensees shall maintain documentation verifying CE attendance and curriculum for a period of three (3) years. This documentation will be subject to audit by the board. (7-1-93)( )

04. **Initial Compliance.** Licensees shall not be required to meet the continuing education requirement during the first year in which they become licensed. ( )

05. **Equivalence.** One (1) continuing education hour shall equal one (1) clock hour. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 450. TESTING (Rule 450).

01. **Purpose Of Rule.** The purpose of this rule is to define, "tests utilizing appropriate procedures," as used in Section 54-2912(b)(5), Idaho Code. This rule is intended to be consistent with and to compliment FDA Rule 801.420 as it refers to hearing aid evaluations. This rule to be effective on and after July 1, 1979. (7-1-93)

02. **Pre-Fitting Testing.** All prospective hearing aid consumers must be given calibrated pure tone air and bone tests with masking when applicable. Speech tests must be given by appropriate equipment calibrated to

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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**BUREAU OF OCCUPATIONAL LICENSES**  
**Rules of the Board of Hearing Aid Dealers and Fitters**

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**Docket No. 24-0601-0301**  
**Proposed Rulemaking**

current H.T.L. reference levels.

(7-1-93)

**03. Sound Field Testing.** Before the prospective consumer purchases a hearing aid or within six (6) weeks afterward, the ~~consumer must be tested by a~~ licensed hearing aid dealer and fitter ~~in both the aided and unaided condition~~ must conduct the testing necessary to document that the fitted instrument meets industry standards and provides benefit to the consumer. ~~The purpose of the test is to document the benefit to the consumer.~~ This testing ~~may~~ shall be accomplished using appropriate sound field testing ~~so as~~ to ensure repeatability. ~~Suggested stimuli for sound field testing include speech, pulsed pure tone, warble tone, narrow band noise, damp wave trains, and ninety (90) degree modulated noise.~~ Verification of benefit may be accomplished using any one (1) of the following tests:

(7-1-93)( )

- a.** Soundfield testing for speech discrimination in both the aided and unaided conditions; ( )
- b.** Soundfield testing using warble tones or narrowband noise to evaluate functional gain; or ( )
- c.** "Real ear" probe microphone measurements. ( )

**04. Records.** A copy of all test data shall be kept on file by the hearing aid dealer and fitter for two (2) years after sale. (7-1-93)

**05. Exemptions.** The testing requirements contained in Subsections 450.02 and 450.03 of this rule shall not apply to those consumers who are not capable of responding to acceptable audiological pure tone tests. Examples of these types of consumers are: (7-1-93)

- a.** A child of tender years; (7-1-93)
- b.** The developmentally disabled; and (7-1-93)
- c.** The legally incompetent by a court order. (7-1-93)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY**

**DOCKET NO. 24-1001-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1509, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 419 through 421.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule or temporary rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 10, CHAPTER 01**

#### **RULES OF THE STATE BOARD OF OPTOMETRY**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 419 through 421.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES

#### 24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

##### DOCKET NO. 24-1001-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1509, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

To clarify required examination and acceptable requirements, and clarify the continuing education requirements and the record keeping required for CE.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes made are not controversial.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August, 2003.

Rayola Jacobsen, Bureau Chief  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1001-0301

#### 275. ENDORSEMENT (Rule 275).

**01. Endorsement.** Any person who presents to the Board of Optometry a certified copy of a certificate or license of registration which he holds in good standing in another state or a foreign country, which state or foreign

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES Rules of the State Board of Optometry

Docket No. 24-1001-0301  
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country has similar requirements for licensing or registration as is provided for new applicants in Idaho (including therapeutic privileges), may apply to the Board for the issuance of a license to practice optometry in the state of Idaho. (4-5-00)

**02. Conditions To Be Granted A License.** The right to be granted a license to practice optometry in Idaho is also subject to the following conditions set out below: (7-1-93)

**a.** The submission of a completed application meeting the requirements of Subsection 175.01 including the applicable fee. (4-5-00)

**b.** That the license or certificate of registration of the applicant shall not have been suspended or revoked by any state or country or subject to any pending or unresolved licensure action in any state or country. That the applicant must not have committed any act which would constitute a violation of the Optometry Act or Board Rules. (4-5-00)

**c.** That for those licensed in another state after January 1, 1986 the applicant has successfully passed the "Treatment and Management of Ocular Disease Examination" administered by the Association of Regulatory Boards of Optometry and completed and returned the state of Idaho law examination. For those licensed in another state before January 1, 1986 the applicant must document to the Board for approval, the education, training, and examination for therapeutic privileges in the other state and return the state of Idaho law examination. ~~(4-5-00)~~( )

**d.** That the applicant has been engaged in the practice of optometry continuously for not less than the last five (5) years. (4-5-00)

**276. -- 299. (RESERVED).**

### **300. CONTINUING EDUCATION IN OPTOMETRY (Rule 300).**

**01. Hours Required, Advance Approval.** Each optometrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of twelve (12) full hours of post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses would be approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (8-24-94)

**02. Additional Hours Required To Use Therapeutic Pharmaceutical Agents.** Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of six (6) additional full hours of post-graduate optometric courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the twelve (12) hours of continuing education required under Subsection 300.01. (7-1-93)

**03. Correspondence/Home Study Courses.** No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained through the mail or from "home study" courses. (8-24-94)

**04. Waiver Of Requirements.** The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist's ability to practice or inability to conform to the rules due to military duty. (3-15-02)

**05. Renewal Application Form.** Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall ~~list the name of the courses, the~~

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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**BUREAU OF OCCUPATIONAL LICENSES**  
**Rules of the State Board of Optometry****Docket No. 24-1001-0301**  
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~~location, date and hours of attendance, and shall submit the form prior to or with the renewal application for license filed each year. The secretary shall review each application form and maintain it for three (3) years attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action.~~ (7-1-93)( )

**06.     Audit.** The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. ( )

**07.     Documentation Of Attendance.** It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. ( )

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.12.01 - RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**DOCKET NO. 24-1201-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-2305, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 422 through 427.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 12, CHAPTER 01**

#### **RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 422 through 427.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

#### 24.12.01 - RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS

##### DOCKET NO. 24-1201-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2305, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Changes date on article incorporated by reference; corrects e-mail address; clarifies application procedure; amends exam section to comply with national testing; amends service extender section to clarify documentation required; and amends educational curriculum requirements.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0301

##### 004. INCORPORATION BY REFERENCE (Rule 4).

The document titled "Ethical Principles of Psychologists and Code of Conduct", published by the American Psychological Association and dated ~~December 1, 1992~~ June 1, 2003, as referenced in Section 350, is herein

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES Rules of the State Board of Psychologist Examiners

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incorporated by reference and is available from the Board's office and on the Board web site. (3-15-02)( )

#### 005. ADDRESS OF THE IDAHO BOARD OF PSYCHOLOGIST EXAMINERS (Rule 5).

The office of the Board of Psychologist Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol~~ psy@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/psy. (3-15-02)( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 100. CREDENTIALS TO BE FILED BY ALL APPLICANTS (Rule 100).

**01. Completed Application.** An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Psychologist Examiners. No application shall be accepted or considered by the Board prior to the date the required doctoral degree was conferred upon the applicant. (7-1-93)( )

**02. Official Transcripts.** All applicants shall arrange for official transcripts of all credits earned, at each approved college or university, to be transmitted by the registrars of the educational institutions directly to the board. (7-1-93)

**03. Letters Of Reference.** Letters of reference, regarding the character, training, and experience of the applicant shall be returned to the board by the references before decision is rendered on the application. (7-1-93)

**04. Post Graduate Experience.** One (1) of the two (2) years of post-graduate experience as required by Section 2307(b), Idaho Code, (not the internship) may be pre-doctoral. The second year must be post-doctoral work under appropriate supervision and must be verified by the appropriate supervisor. (3-15-02)

**05. Official Documentation.** Official documentation of meeting the requirements of Chapter 23, Title 54, Idaho Code and IDAPA 24.12.01, must be received by the Board directly from the entity or person responsible for providing such official documentation. Applicants are responsible for requesting the required documentation from the appropriate entities and persons. (3-15-02)

**06. Applications On File.** Applications on file with the Board for a period in excess of five (5) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 200. EXAMINATIONS (Rule 200).

**01. Written Exam Required.** The board will require a written examination of applicants. The written examination will be the National Examination for Professional Practice In Psychology, ~~and a score of seventy percent (70%) will be considered passing~~ (EPPP). (3-15-02)( )

**02. Passing Score.** The board has determined that a passing score on the EPPP shall be a raw score of one hundred forty (140) or, for examinations after April 1, 2001, a scaled score of five hundred (500) for licensure. ( )

**023. Time And Place Of Exam.** The examination will be conducted at a time and place specified by the board. (7-1-93)

**034. Failure Of Exam.** The first time the examination is failed the applicant may take it again the next time it is given upon application and payment of fees. If the examination has been failed twice, the individual must

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### **BUREAU OF OCCUPATIONAL LICENSES** **Rules of the State Board of Psychologist Examiners**

**Docket No. 24-1201-0301**  
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wait at least one (1) year before taking it a third time. The individual must wait at least one (1) year and petition the board for approval to take the examination the fourth time which petition shall include evidence satisfactory to the board that the applicant has taken additional study in the field of Psychology before approval will be granted.

(7-1-93)

**045. Waiver Of Exam.** Upon application, the examination may be waived to ~~a member~~ an applicant who is a diplomate in good standing of the American Board of Professional Psychology. ~~(7-1-93)~~ ( )

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (Rule 450).**

The board recognizes that licensed psychologists may choose to extend their services by using service extenders. The board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience.

(7-1-93)

##### **01. General Provisions For Licensed Psychologists Extending Their Services Through Others.**

(7-1-93)

**a.** The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)

**i.** Have the authority to cause termination of compensation for the service extender. (7-1-93)

**ii.** Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)

**b.** The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)

**i.** Within thirty (30) days after employing the service extender, formulate and provide to the board a written supervisory plan for each service extender. The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the services of the licensed psychologist. The plan shall be accompanied by a completed application form and an application fee of fifty dollars (\$50). (7-1-93)

**ii.** Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

**iii.** Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

##### **02. Qualifications For Service Extenders.** (7-1-93)

**a.** Category I: A service extender will be placed in Category I if: (7-1-93)

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### **BUREAU OF OCCUPATIONAL LICENSES** **Rules of the State Board of Psychologist Examiners**

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i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a master's degree from a program in psychology, counseling, or human development as determined by the board. (7-1-93)

### **03. Conditions For Use Of Service Extenders.** (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist," etc. (7-1-93)

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from these provisions.

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Without notification to the board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the board on written request by the licensed psychologist to the board. (7-1-93)

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit for each service extender a fee of fifty dollars (\$50) together with certification to the board that they possess: (7-1-93)( )

i. A ~~copy of the~~ written record of supervisory contact for the previous twelve (12) months ~~with the names of service recipients removed;~~ and (7-1-93)( )

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site; and (7-1-93)( )

iii. An updated plan for the supervision of each of his service extenders. ~~The updated plan shall be accompanied by a fee of fifty dollars (\$50).~~ (7-1-93)( )

m. Documentation of supervisory contact, hours of supervision, hours of extender services, and plan of supervision shall be maintained by the supervisor for not less than three (3) years for each service extender and submitted to the board upon request. ( )

451. -- 499. (RESERVED).

### 500. EDUCATIONAL AND CREDENTIALING REQUIREMENTS FOR LICENSURE (Rule 500).

Applicants who receive a doctoral degree from a program accredited by the American Psychological Association are considered to have met all criteria outlined in Section 500. (5-3-03)

01. **Training In Professional Psychology.** Training in professional psychology is doctoral training offered in an institution of higher education accredited by: (7-1-93)

a. Middle States Association of Colleges and Schools. (7-1-93)

b. The New England Association of Schools and Colleges. (7-1-93)

c. The North Central Association of Colleges and Schools. (7-1-93)

d. The Northwest Association of Schools and Colleges. (7-1-93)

e. The Southern Association of Colleges and Schools. (7-1-93)

f. The Western Association of Schools and Colleges. (7-1-93)

02. **Training Program.** The training program must stand as a recognizable, coherent organizational entity within the institution. Programs that are accredited by the American Psychological Association or that meet the criteria for such accreditation are recognized as meeting the definition of a professional psychology program. (5-3-03)

03. **Authority And Primary Responsibility.** There must be a clear authority and primary responsibility for the core and specialty areas. (7-1-93)

04. **Content Of Program.** The program must be an integrated, organized sequence of study. (7-1-93)

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**05. There Must Be An Identifiable Training Faculty And A Psychologist Responsible For The Program.** There must be an identifiable training faculty on site of sufficient size and breadth to carry out the training responsibilities. A faculty psychologist must be responsible for the program. (5-3-03)

**06. Program Must Have An Identifiable Body.** The program must have an identifiable body of students who are matriculated in that program for a degree. (7-1-93)

**07. What The Program Must Include.** The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. Pre-doctoral internships must be completed at member sites of the Association of Psychology Postdoctoral and Internship Centers, or sites demonstrating an equivalent program. (5-3-03)

**08. Curriculum.** The curriculum shall encompass a minimum of three (3) academic years of full time graduate study at least one (1) year of which is spent in full-time physical residence at the degree granting educational institution. In addition to instruction in ~~scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics~~ professional areas of competence, which include assessment and diagnosis, intervention, consultation, and supervision, the core program shall require each student to demonstrate competence in ~~each of the following~~ specific substantive ~~content~~ areas. ~~This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) substantive content areas~~ Minimal competence is demonstrated by passing a three (3) credit semester graduate course (or a five (5) credit quarter graduate course) in each of the substantive areas listed below: (7-1-93)( )

**a.** Biological Bases of Behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology. (7-1-93)

**b.** Cognitive-Affective Bases of Behavior: Learning, ~~thinking~~ cognition, motivation, emotion. (7-1-93)( )

**c.** Social Bases of Behavior: Social psychology, group processes, organizational and systems theory. (7-1-93)

**d.** Individual Differences: Personality theory, human development, abnormal psychology. (7-1-93)

**e.** Scientific and Professional Standards and Ethics. ( )

**f.** Research Design and Methodology. ( )

**g.** Techniques of Data Analysis: statistics, multivariate statistics, factor analysis, multiple regression, non-parametric statistics. ( )

**h.** Psychological Measurement: psychometric principles, test theory, personality assessment, cognitive assessment. ( )

**i.** History and Systems of Psychology. ( )

**j.** Multiculturalism and Individual Diversity. ( )

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### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

**DOCKET NO. 24-1401-0301**

#### **NOTICE OF RULEMAKING - PENDING AND TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is October 21, 2003. This pending rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting a temporary rule. The action is authorized pursuant to Section 54-3204, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule.

Adds definition for psychotherapy, clarifies practice of social work at each level, clarifies examination procedure and endorsement requirements, amends continuing education in cases involving illness, clarifies continuing education ethics requirement, allows continuing education from social services agencies, and define competent practice for social workers.

Due to public comment, changes were made to proposed text as follows: include definition for supportive counseling; revisions were made in practice of social work; the word endorsement was added to 350; and competent practice for social workers is defined.

In accordance with Section 67-5226, Idaho Code, the full text of the temporary rule is being published in this Bulletin following this notice and includes changes made to the pending rule. The text of the pending has been modified in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Vol. 03-10, pages 428 through 433.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: to protect the health, safety, and welfare of the public and to confer a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St., Ste. 220, Boise, ID 83702  
(208) 334-3233 / (208) 334-3945 fax

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**IDAPA 24, TITLE 14, CHAPTER 01**

**RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

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There are substantive changes from the proposed rule text.

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 428 through 433.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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*Language That Has Been Deleted From The Original Proposed Rule  
Has Been Removed And New Language Is Shown In Italics.*

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### THE FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 24-1401-0301

#### 010. DEFINITIONS (Rule 10).

01. **Board.** The State Board of Social Work Examiners as prescribed in Section 54-3202, Idaho Code. (7-1-93)

02. **Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-3204 and 67-2602, Idaho Code. (3-13-02)

03. **Psychotherapy.** Treatment methods using a specialized, formal interaction between a Clinical Social Worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, intrapersonal, interpersonal, and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. (10-21-03)T

04. **Supportive Counseling.** *Supportive counseling by a social worker means a method used by social workers to assist individuals, couples, families, and groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns. This help in the maintenance of adaptive patterns is done in the interview through reassurance, advice giving, information providing, and pointing out client strengths and resources. Supportive counseling does not seek to reach unconscious material.* (10-21-03)T

### (BREAK IN CONTINUITY OF SECTIONS)

#### 201. PRACTICE OF SOCIAL WORK.

01. **Baccalaureate Social Work.** The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social



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workers are prohibited from performing ~~clinical social work~~ psychotherapy.

(~~5-3-03~~)(10-21-03)T

**02. Master's Social Work.** The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide ~~clinical social work~~ psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (~~refer to supervision plan~~).

(~~5-3-03~~)(10-21-03)T

**03. Clinical Social Work.** The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work ~~encompasses interventions directed to interpersonal interactions, intrapsychic dynamics, and life support and management issues.~~ It includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice.

(~~5-3-03~~)(10-21-03)T

**04. Clinical Practice Exemption.** A social worker licensed in Idaho at the masters level prior to August 5, 2002 engaged in clinical social work and employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to July 1, 2005 showing a minimum of one hundred (100) face-to-face hours of employer provided supervision. No more than seventy-five (75) hours of supervision may be provided by a licensed counselor, marriage and family therapist, or psychiatric nurse and no less than twenty-five (25) hours of supervision may be provided by a licensed clinical social worker, psychologist, or an individual licensed to practice medicine and surgery who practices in the area of psychiatry. A licensed social worker who meets the requirements of Section 201 may continue to practice clinical social work until July 1, 2005. An individual practicing under this exemption must still pass the clinical examination as set forth in Section 350 prior to clinical licensure.

(10-21-03)T

**045. Independent Practice Of Social Work.** As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for that practice. No ~~baccalaureate or masters level~~ social worker, ~~regardless of the level of licensure,~~ shall engage in independent practice until such time as the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000) hours in a supervised setting in no less than two (2) years. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to July 1, 2005, submit documentation establishing that a minimum of three thousand (3000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained in a supervised setting and provided by a qualified and experienced professional working in the same area of practice; that supervision occurred on a regular and on-going basis; and that the supervisor(s) held a social work license in good standing.

(~~5-3-03~~)(10-21-03)T

**056. Private Practice Of Social Work.** As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions.

(5-3-03)

**067. Employment Of A Social Worker.** A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility

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for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

**078. Supervision.** Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision ~~that~~ is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. Supervision shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice. Supervision ~~for licensure as an independent social worker~~ must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.078.c. (5-3-03)(10-21-03)T

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker ~~who is~~ approved to provide independent practice at the baccalaureate, masters, or clinical level. (5-3-03)(10-21-03)T

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

c. Supervision of social workers pursuing licensure as clinical level ~~independent~~ practitioners must be provided by a licensed clinical social worker, a licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry, and must focus on clinical social work as defined. (5-3-03)(10-21-03)T

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (5-3-03)(10-21-03)T

**082. Supervised Practice Required.** To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.078; (5-3-03)(10-21-03)T

b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

c. Not have more than two (2) supervisors at any given time. (5-3-03)

### (BREAK IN CONTINUITY OF SECTIONS)

### 350. EXAMINATIONS, ENDORSEMENT, AND BOARD MEETINGS (Rule 350).

Examinations will be conducted by the board for qualified applicants for social work licensing and board meetings will be held to conduct other business. Applications for examination may be reviewed and approved by a designated Board member upon determination that the applicant meets the qualifications for examination. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. (7-1-93)(10-21-03)T

**01. Board Meetings.** Board meetings will be held at least three (3) times each year at such times and places as the board deems necessary. (5-3-03)

**02. Exam Utilized.** The Board utilizes the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB). (5-3-03)

a. Bachelor level candidates shall be required to successfully pass the basic examination. (5-3-03)

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- b. Masters level candidates shall be required to successfully pass the intermediate examination. (5-3-03)
- c. Clinical level candidates shall be required to successfully pass the clinical examination. (5-3-03)
- 03. Dates Of Exams.** Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)
- 04. Graduation Date To Qualify For Exam.** Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination at the established testing period immediately preceding the date of graduation. (5-24-95)
- 05. Exemption From Exam.** An applicant who has been tested for licensure utilizing an acceptable examination will be exempt from the Idaho examination if the applicant received a converted score of seventy (70) based upon a criterion reference examination. (7-1-93)
- 06. Endorsement.** The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (5-3-03)
- a. Holds a current active social work license, ~~in the profession at the level~~ for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and ~~(5-3-03)~~(10-21-03)T
- b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-3-03)
- c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (5-3-03)
- d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)
- e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)
- ~~**07- Application Deadline.** Applications must be received in the Bureau of Occupational Licenses at least ten (10) days prior to the next board meeting. Candidates whose applications are received after this date will be scheduled for the subsequent board meeting. (5-3-03)~~

### 351. CONTINUING EDUCATION (Rule 351).

- 01. Continuing Education Requirements.** (7-1-95)
- a. Continuing education is required for renewal at all levels of social work licensure in Idaho. The board may, upon application, waive the requirements of this rule in cases involving illness or unusual circumstances interfering with the licensee's ability to practice or inability to conform to the rules. ~~(5-3-03)~~(10-21-03)T
- b. The completion of a minimum of twenty (20) continuing education (CE) hours annually is required to renew each licensure level. (5-3-03)
- c. Compliance with the continuing education (CE) requirements for licensees shall be reported annually. A continuing education course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. (5-3-03)
- d. Each licensed social worker shall complete and return to the Bureau a Board approved continuing education report form as part of the annual renewal of licenses. (5-3-03)

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e. Licensees will maintain documentation verifying CE attendance and curriculum for a period of four (4) years. This documentation will be subject to audit by the board. (5-3-03)

f. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under the social work act. (5-3-03)

g. One (1) continuing education hour shall equal one (1) clock hour. (7-1-95)

h. Courses that are part of the curriculum of a university, college or other educational institution shall be allotted CE credit at the rate of fifteen (15) CE hours for each semester hour or ten (10) CE hours for each quarter hour of school credit awarded. (7-1-95)

i. No more than ten (10) continuing education hours may be obtained from category II. (7-1-95)

j. As part of the required hours of continuing education, all licensees must complete at least ~~four~~ one (~~4~~) hours of training every ~~four~~ (~~4~~) years in professional ethics. (~~7-1-95~~)(10-21-03)T

k. Applications for reinstatement of a cancelled license shall include documented proof of meeting the continuing education requirements for the previous twelve (12) months. The ~~four~~ (~~4~~) year cycle requirement for professional ethics training shall continue during any period of cancellation. (~~5-3-03~~)(10-21-03)T

#### 02. Categories Of Continuing Education. (7-1-95)

a. Category I. Category I includes formally organized learning events, ideally involving face-to-face interaction with a teacher for the purpose of accomplishing specific learning objectives. Courses, workshops, conferences, practice oriented seminars, staff development and training activities coordinated and/or taught by approved and recognized educators also are included in this category. Because of our geographic location and sparse population, closed circuit T.V., video tapes, and correspondence courses may be substituted for face-to-face contact if coordinated by an approved instructor. Videotaped presentations require a discussion period to follow that reviews the learning objectives of the taped program. (7-1-95)

b. Category II. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making an initial presentations on professional issues or programs, teaching a course for the first time, presenting a lecture, or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research. (~~7-1-95~~)(10-21-03)T

c. The subject matter of all approved continuing education shall be germane to the practice of social work as defined in Section 54-3202, Idaho Code, and may include the specialties of Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, Psychology, or Pastoral Counseling. (5-3-03)

#### 03. Continuing Education Sources. (7-1-95)

a. Continuing education course providers shall include: (5-3-03)

i. Professional Associations. Continuing education hours may be obtained by participating in activities sponsored by or approved by professional associations including but not limited to the Idaho Chapter of the National Association of Social Workers, Idaho Society for Clinical Social Workers. The professional association shall certify the number of clock hours of educational content in each sponsored or approved activity. (5-3-03)

ii. Educational Institutions. Continuing education hours may be obtained by completing coursework not below your level of licensing or by participating in continuing education programs sponsored by or approved by educational institutions accredited by a regional body recognized by the Council on Post Secondary Accreditation. The educational institution shall certify the number of clock hours of educational content in each sponsored or approved program. (7-1-95)

iii. Government Agencies, Schools and Hospitals. Continuing education hours may be obtained by participating in in-service training, courses or workshops sponsored by federal, state, or local government agencies, public school systems and licensed hospitals. The provider shall certify the number of clock hours of educational

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content in each approved activity.

(7-1-95)

iv. Private social service agencies and other entities. Continuing education hours may be obtained by participating in continuing education programs sponsored by agencies or entities who regularly provide social work services. The provider shall certify the number of clock hours of educational content in each approved activity.

(10-21-03)T

b. All continuing education hours must be relevant to the profession of social work at the individual's particular level of social work licensure. The presenter's level of education must be at the licensee's level or above. Continuing education for clinical licensees must be clinical in nature except that five (5) hours each year may be non-clinical but shall be germane to the practice of social work. Final approval of acceptable programs rests with the Board.

~~(5-3-03)~~(10-21-03)T

#### **04. Documentation.**

(7-1-95)

a. Each licensee shall maintain documentation verifying CE attendance and curriculum for a period of four (4) years from the date of completion. This documentation will be subject to audit by the Board.

(5-3-03)

b. Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation.

(5-3-03)

c. Category I documents must be in the form of a certificate of attendance, a statement signed by the provider verifying participation in the activity, or an official transcript.

(5-3-03)

d. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed.

(7-1-95)

e. Documented proof of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials.

(5-3-03)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **450. STATEMENT OF PUBLIC POLICY AND CODE OF PROFESSIONAL CONDUCT (Rule 450).**

The profession of social work is dedicated to serving people; the professional relationship between social workers and clients thus shall be governed by the highest moral and ethical values. The client is in a vulnerable role that extends beyond the time frame of actual services. In both social and professional interactions, this vulnerability shall be taken into consideration whether the person is currently or has been a client. Following is the Code of Professional Conduct:

(5-24-95)

#### **01. The Social Worker's Ethical Responsibility To Clients.**

(7-1-93)

a. For the purpose of this Code of Professional Conduct, a client is anyone for whom the social worker provides social work services directly or indirectly through consultations, staffings, or supervision with other professionals.

(7-1-93)

b. The social worker shall not commit fraud nor misrepresent services performed.

(7-1-93)

c. The social worker shall not solicit the clients of an agency for which they provide services for his private practice.

(7-1-93)

d. The social worker shall not divide a fee or accept or give anything of value for receiving or making a referral.

(7-1-93)

e. The social worker shall provide clients with accurate and complete information regarding the

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extent and nature of the services available to them. (7-1-93)

**f.** The social worker shall terminate service to clients, and professional relationships with them, when such service and relationships are no longer required or in which a conflict of interest arises. (7-1-93)

**g.** A social worker shall not violate a position of trust by knowingly committing any act detrimental to a client. (7-1-93)

**h.** A social worker shall not exploit their professional relationships with clients (or former clients), supervisees, supervisors, students, employees, or research participants, sexually or otherwise. Social workers shall not condone or engage in sexual harassment. Sexual harassment is defined as deliberate or repeated comments, gestures, or physical contacts of a sexual nature that are unwelcomed by the recipient. (7-1-93)

**i.** A social worker shall not engage in sexual acts with a client or with a person who has been a client within the past three (3) years. A social worker shall not provide social work services to a person with whom he/she has had a sexual relationship. (7-1-93)

**02. The Social Worker's Conduct And Comportment As A Social Worker.** (7-1-93)

**a.** In providing services, a social worker shall not discriminate on the basis of age, sex, race, color, religion, national origin, mental or physical handicap, political belief, or any other preference or personal characteristic, condition or status. (7-1-93)

**b.** Social workers shall not undertake any activity in which their personal problems are likely to lead to inadequate performance or harm to a client, colleague, student, or research participant. If engaged in such activity when they become aware of their personal problems, they shall seek competent professional assistance to determine whether they should suspend, terminate, or limit the scope of their professional activities. (7-1-93)

**c.** A social worker shall not provide social work service while under the influence of alcohol or other mind-altering or mood-altering drugs which impair delivery of services. (7-1-93)

**d.** A social worker shall not repeatedly fail to keep scheduled appointments. (7-1-93)

**e.** The social worker who anticipates the termination or interruption of service to clients shall notify clients promptly and seek the transfer, referral, or continuation of services in relation to the clients' needs and preferences. (7-1-93)

**f.** The social worker shall attempt to make appropriate referrals as indicated by the client's need for services. (7-1-93)

**g.** A social worker shall obtain the client's or legal guardian's informed written consent when a client is to be involved in any research project. A social worker shall explain the research, including any implications. (7-1-93)

**h.** The social worker shall obtain informed consent of clients before taping, recording, or permitting third party observation of their activities. (7-1-93)

**i.** A social worker shall safeguard information given by clients in providing client services. Except when required by law or judicial order, a social worker shall obtain the client's informed written consent before releasing confidential information from the setting or facility except for compelling reasons defined as but not limited to: (7-1-93)

i. Consultation with another professional on behalf of the client thought to be dangerous to self or others; (7-1-93)

ii. Duty to warn pursuant to Chapter 19, Title 6, Idaho Code; (5-24-95)

iii. Child abuse and sexual molestation pursuant to Chapter 16, Title 16, Idaho Code; and (5-24-95)

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- iv. Any other situation in accordance with statutory requirements. (7-1-93)
- j. A social worker shall report any violation of the law or rules, including Code of Professional Conduct, by a person certified under Chapter 32, Title 54, Idaho Code. (7-1-93)

**03. Competent Practice for Social Workers.** *All social workers shall practice in a competent manner consistent with their level of education, training and experience.* (10-21-03)T

**a.** *A social worker shall only represent themselves and practice within the boundaries of their education, training, licensure level, supervision, and other relevant professional experience.* (10-21-03)T

**b.** *A social worker shall only practice within new areas or use new intervention techniques or approaches after engaging in appropriate study, training, consultation, or supervision.* (10-21-03)T

**c.** *A social worker shall exercise careful judgement, when generally recognized standards do not exist with respect to an emerging area of practice, and take responsible steps to ensure the competence of their practice.* (10-21-03)T

**034. The Advertising Rules For Social Workers.** No social worker shall disseminate or cause the dissemination of any advertisement or advertising which is any way fraudulent, false, deceptive or misleading. Any advertisement or advertising shall be deemed by the board to be fraudulent, false, deceptive, or misleading if it: (7-1-93)

- a. Contains a misrepresentation of fact; or (7-1-93)
- b. Is misleading or deceptive because in its content or in the context in which it is presented it makes only a partial disclosure of relevant facts. More specifically, it is misleading and deceptive for a social worker to advertise free services or services for a specific charge when in fact the social worker is transmitting a higher charge for the advertised services to a third party payor for payment or charges the patient or a third party. It is misleading and deceptive for a social worker or a group of social workers to advertise a social work referral service or bureau unless the advertisement specifically names each of the individual social workers who are participating in the referral service or bureau. (7-1-93)
- c. Creates false or unjustified expectations of beneficial treatment or successful outcomes; or (7-1-93)
- d. Fails to identify conspicuously the social worker or social workers referred to in the advertising as a social worker or social workers; or (7-1-93)
- e. Contains any representation or claims, as to which the social worker, referred to in the advertising, fails to perform; or (7-1-93)
- f. Contains any representation which identifies the social worker practice being advertised by a name which does not include the terms "social worker," "social work," or some easily recognizable derivation thereof; or (7-1-93)
- g. Contains any representation that the practitioner has received any license or recognition by the state of Idaho or its authorized agents, which is superior to the license and recognition granted to any social worker who successfully meets the licensing requirements of Chapter 32, Title 54, Idaho Code; or (7-1-93)
- h. Appears in any classified directory, listing, or compendium under a heading, which when considered together with the advertisement, has the capacity or tendency to be deceptive or misleading with respect to the profession or professional status of the social worker; or (7-1-93)
- i. Contains any other representation, statement, or claim which is misleading or deceptive. (7-1-93)

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### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS**

##### **DOCKET NO. 24-1401-0301**

##### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3204, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Adds definition for psychotherapy, clarifies practice of social work at each level, clarifies examination procedure and endorsement requirements, amends continuing education in cases involving illness, clarifies continuing education ethics requirement, and allows continuing education from social services agencies.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes made were with assistance of interested parties.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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#### **THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0301**

##### **010. DEFINITIONS (Rule 10).**

**01. Board.** The State Board of Social Work Examiners as prescribed in Section 54-3202, Idaho Code.



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(7-1-93)

**02. Bureau.** The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-3204 and 67-2602, Idaho Code. (3-13-02)

**03. Psychotherapy.** Treatment methods using a specialized, formal interaction between a Clinical Social Worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, intrapersonal, interpersonal, and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### 201. PRACTICE OF SOCIAL WORK.

**01. Baccalaureate Social Work.** The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. ~~Bachelor level social workers are prohibited from performing clinical social work.~~ (5-3-03)( )

**02. Master's Social Work.** The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide ~~clinical social work~~ psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (refer to supervision plan)- (5-3-03)( )

**03. Clinical Social Work.** The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work encompasses interventions directed to interpersonal interactions, intrapsychic dynamics, and life-support and management issues. It includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (5-3-03)( )

**04. Clinical Practice Exemption.** A social worker licensed at the masters level prior to August 5, 2002 engaged in clinical social work and employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to January 1, 2005 showing a minimum of one hundred (100) face-to-face hours of employer provided supervision. ( )

**045. Independent Practice Of Social Work.** As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for that practice. No social worker, regardless of the level of licensure, shall engage in independent practice until such time as the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000)

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hours in a supervised setting in no less than two (2) years. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to January 1, 2005, submit documentation establishing that a minimum of three thousand (3000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained: ~~(5-3-03)~~( )

**a.** In a supervised setting and provided by a qualified and experienced professional working in the same area of practice; ( )

**b.** That supervision occurred on a regular and on-going basis; and ( )

**c.** That the supervisor(s) held a social work license in good standing. ( )

**056. Private Practice of Social Work.** As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

**067. Employment Of A Social Worker.** A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

**078. Supervision.** Consultative-teaching supervision that is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. Supervision shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice. Supervision for licensure as an independent social worker must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.078.c. ~~(5-3-03)~~( )

**a.** Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker who is approved to provide independent practice at the baccalaureate, masters, or clinical level. (5-3-03)

**b.** Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

**c.** Supervision of social workers pursuing licensure as clinical level independent practitioners must be provided by a licensed clinical social worker, a licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry. (5-3-03)

**d.** Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor ~~or~~ being restricted by the Board from providing further supervision. ~~(5-3-03)~~( )

**089. Supervised Practice Required.** To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

**a.** Meet the requirements set forth in Subsection 201.078; ~~(5-3-03)~~( )

**b.** Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

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- c. Not have more than two (2) supervisors at any given time. (5-3-03)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **350. EXAMINATIONS AND BOARD MEETINGS (Rule 350).**

Examinations will be conducted by the board for qualified applicants for social work licensing and board meetings will be held to conduct other business. Applications for examination may be reviewed and approved by a designated Board member upon determination that the applicant has submitted a complete application and all required documentation to be considered for examination. Approval to sit for examination does not obligate the Board to issue a license if it is later determined that the applicant does not meet the requirements for licensure. ~~(7-1-93)~~(\_\_\_\_)

**01. Board Meetings.** Board meetings will be held at least three (3) times each year at such times and places as the board deems necessary. (5-3-03)

**02. Exam Utilized.** The Board utilizes the uniform, nationally standardized examination of the Association of Social Work Boards (ASWB). (5-3-03)

a. Bachelor level candidates shall be required to successfully pass the basic examination. (5-3-03)

b. Masters level candidates shall be required to successfully pass the intermediate examination. (5-3-03)

c. Clinical level candidates shall be required to successfully pass the clinical examination. (5-3-03)

**03. Dates Of Exams.** Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)

**04. Graduation Date To Qualify For Exam.** Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination at the established testing period immediately preceding the date of graduation. (5-24-95)

**05. Exemption From Exam.** An applicant who has been tested for licensure utilizing an acceptable examination will be exempt from the Idaho examination if the applicant received a converted score of seventy (70) based upon a criterion reference examination. (7-1-93)

**06. Endorsement.** The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (5-3-03)

a. Holds a current active social work license, ~~in the profession~~ at the level for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and ~~(5-3-03)~~(\_\_\_\_)

b. Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-3-03)

c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (5-3-03)

d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (5-3-03)

e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (5-3-03)

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~~07. Application Deadline. Applications must be received in the Bureau of Occupational Licenses at least ten (10) days prior to the next board meeting. Candidates whose applications are received after this date will be scheduled for the subsequent board meeting.~~ (5-3-03)

#### 351. CONTINUING EDUCATION (Rule 351).

##### 01. Continuing Education Requirements. (7-1-95)

a. Continuing education is required for renewal at all levels of social work licensure in Idaho. The board may, upon application, waive the requirements of this rule in cases involving illness or unusual circumstances interfering with the licensee's ability to practice or inability to conform to the rules. (5-3-03)( )

b. The completion of a minimum of twenty (20) continuing education (CE) hours annually is required to renew each licensure level. (5-3-03)

c. Compliance with the continuing education (CE) requirements for licensees shall be reported annually. A continuing education course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. (5-3-03)

d. Each licensed social worker shall complete and return to the Bureau a Board approved continuing education report form as part of the annual renewal of licenses. (5-3-03)

e. Licensees will maintain documentation verifying CE attendance and curriculum for a period of four (4) years. This documentation will be subject to audit by the board. (5-3-03)

f. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under the social work act. (5-3-03)

g. One (1) continuing education hour shall equal one (1) clock hour. (7-1-95)

h. Courses that are part of the curriculum of a university, college or other educational institution shall be allotted CE credit at the rate of fifteen (15) CE hours for each semester hour or ten (10) CE hours for each quarter hour of school credit awarded. (7-1-95)

i. No more than ten (10) continuing education hours may be obtained from category II. (7-1-95)

j. As part of the required hours of continuing education, all licensees must complete at least ~~four~~ one (4) hours of training every ~~four (4)~~ years in professional ethics. (7-1-95)( )

k. Applications for reinstatement of a cancelled license shall include documented proof of meeting the continuing education requirements for the previous twelve (12) months. The ~~four (4) year cycle~~ requirement for professional ethics training shall continue during any period of cancellation. (5-3-03)( )

##### 02. Categories Of Continuing Education. (7-1-95)

a. Category I. Category I includes formally organized learning events, ideally involving face-to-face interaction with a teacher for the purpose of accomplishing specific learning objectives. Courses, workshops, conferences, practice oriented seminars, staff development and training activities coordinated and/or taught by approved and recognized educators also are included in this category. Because of our geographic location and sparse population, closed circuit T.V., video tapes, and correspondence courses may be substituted for face-to-face contact if coordinated by an approved instructor. Videotaped presentations require a discussion period to follow that reviews the learning objectives of the taped program. (7-1-95)

b. Category II. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making an initial presentations on professional issues or programs, teaching a course for the first time, presenting a lecture, or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research. (7-1-95)( )

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c. The subject matter of all approved continuing education shall be germane to the practice of social work as defined in Section 54-3202, Idaho Code, and may include the specialties of Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, Psychology, or Pastoral Counseling. (5-3-03)

**03. Continuing Education Sources.** (7-1-95)

a. Continuing education course providers shall include: (5-3-03)

i. Professional Associations. Continuing education hours may be obtained by participating in activities sponsored by or approved by professional associations including but not limited to the Idaho Chapter of the National Association of Social Workers, Idaho Society for Clinical Social Workers. The professional association shall certify the number of clock hours of educational content in each sponsored or approved activity. (5-3-03)

ii. Educational Institutions. Continuing education hours may be obtained by completing coursework not below your level of licensing or by participating in continuing education programs sponsored by or approved by educational institutions accredited by a regional body recognized by the Council on Post Secondary Accreditation. The educational institution shall certify the number of clock hours of educational content in each sponsored or approved program. (7-1-95)

iii. Government Agencies, Schools and Hospitals. Continuing education hours may be obtained by participating in in-service training, courses or workshops sponsored by federal, state, or local government agencies, public school systems and licensed hospitals. The provider shall certify the number of clock hours of educational content in each approved activity. (7-1-95)

iv. Private Social Service Agencies and Other Entities. Continuing education hours may be obtained by participating in continuing education programs sponsored by agencies or entities who regularly provide social work services. The provider shall certify the number of clock hours of educational content in each approved activity. ( )

b. All continuing education hours must be relevant to the profession of social work at the individual's particular level of social work licensure. The presenter's level of education must be at the licensee's level or above. Continuing education for clinical licensees must be clinical in nature except that five (5) hours each year may be non-clinical but shall be germane to the practice of social work. Final approval of acceptable programs rests with the Board. (5-3-03)( )

**04. Documentation.** (7-1-95)

a. Each licensee shall maintain documentation verifying CE attendance and curriculum for a period of four (4) years from the date of completion. This documentation will be subject to audit by the Board. (5-3-03)

b. Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. (5-3-03)

c. Category I documents must be in the form of a certificate of attendance, a statement signed by the provider verifying participation in the activity, or an official transcript. (5-3-03)

d. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (7-1-95)

e. Documented proof of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. (5-3-03)

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### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.15.01- RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

**DOCKET NO. 24-1501-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-3404, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 434 through 438.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 15, CHAPTER 01**

#### **RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 434 through 438.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

#### 24.15.01- RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3404, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Makes provision for supervision guidelines and definitions for both counselors and marriage and family therapists; deletes grandfather provision as the grandfather period has passed; requires ethics as part of continuing education.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-0301

#### 004. INCORPORATION BY REFERENCE (Rule 4).

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES

Docket No. 24-1501-0301

### Rules of the Professional Counselors and Marriage and Family Therapists Proposed Rulemaking

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**01. ACA Code Of Ethics.** “ACA Code of Ethics and Standards of Practice,” as published by the American Counseling Association (ACA), dated 1999 and referenced in Subsections 241.02, 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-13-02)

**02. AAMFT Code Of Ethics.** The document titled “AAMFT Code of Ethics”, as published by the American Association for Marriage and Family Therapy (AAMFT), dated July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-13-02)

**03. ACES Guidelines.** The document titled “ACES” that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-2-03)

**04. Guidelines.** The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2002 referenced in Subsection 240.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. ( )

### (BREAK IN CONTINUITY OF SECTIONS)

#### **238. MARRIAGE AND FAMILY THERAPISTS (Rule 238).**

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

**01. Graduate Degree.** Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

**02. Practicum.** Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

**03. Supervised Marriage And Family Therapy Experience.** Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Marriage and Family Therapist must be registered with the Board to provide post graduate supervision. (4-2-03)

**a.** A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

i. A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)

ii. Two hundred (200) hours of supervision. (3-13-02)

**b.** Supervision must be obtained from a registered marriage and family therapist supervisor or a licensed clinical professional counselor, licensed psychologist, licensed clinical social worker, or licensed psychiatrist who documents: ( )

i. A minimum of five (5) years of experience providing marriage and family therapy; and ( )

ii. Fifteen (15) contact hours of education in supervisor training; and ( )

iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. ( )

**bc.** No more than one hundred (100) hours of group supervision shall be allowed. Group supervision



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### BUREAU OF OCCUPATIONAL LICENSES

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### Rules of the Professional Counselors and Marriage and Family Therapists Proposed Rulemaking

shall be defined as no more than six (6) supervisees per each supervisor; and (3-13-02)

**ed.** Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)

**de.** Supervision must employ the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-13-02)

**ef.** In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)

**fg.** The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

**04. Examination.** (3-13-02)

**a.** The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)

**b.** The examination will be conducted at a time and place specified by the Board. (3-13-02)

**c.** Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

**239. ~~GRANDFATHER PROVISION FOR MARRIAGE AND FAMILY THERAPY LICENSURE (Rule 239).~~**  
*Until June 30, 2003 any person who meets the qualifications outlined in Section 54-3405C(6), Idaho Code, shall provide the following and upon approval by the Board be issued a marriage and family therapy license:* (3-13-02)

**~~01. Application.~~** *A complete application including the applicable fees; and* (3-13-02)

**~~02. Documentation.~~** *Certified documentation of;* (3-13-02)

**~~a.~~** *Current clinical membership in the AAMFT or the National Academy for Certified Family Therapists (NACFT) or membership or certification in another professional organization with requirements substantially similar to AAMFT or NACFT; or* (3-13-02)

**~~b.~~** *A graduate degree in a mental health related field from an accredited college of university; and* (3-13-02)

**~~c.~~** *A minimum of three thousand (3,000) hours of post graduate direct client contact experience in marriage and family therapy.* (3-13-02)

**239. MARRIAGE AND FAMILY THERAPIST SUPERVISOR REQUIREMENTS (Rule 239).**  
Effective July 1, 2004, licensed marriage and family therapists in Idaho shall be registered with the board to provide supervision for those individuals pursuing licensure in the state of Idaho as a marriage and family therapist. ( )

**01. Requirements For Registration.** ( )

**a.** Possess two (2) years experience as a licensed marriage and family therapist and document at least two thousand (2,000) hours of direct client contact with couples and families. ( )

**b.** Document fifteen (15) contact hours of education in supervisor training as approved by the Board. ( )

**c.** Have not been subject to discipline for five (5) years prior to registration. ( )

**02. Registration.** A marriage and family therapist shall fully complete the application form as established by the board and submit the designated fee as adopted by board rule. ( )

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES

Docket No. 24-1501-0301

### Rules of the Professional Counselors and Marriage and Family Therapists Proposed Rulemaking

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**03. Supervision.** ( )

**a.** A registered marriage and family therapist shall provide supervision in conformance with the guidelines for supervisors adopted by the American Association for Marriage and Family Therapists. ( )

**b.** A registered marriage and family therapist shall not supervise more than six (6) individuals. ( )

240. -- 244. (RESERVED).

**245. REGISTERED INTERNS (Rule 245).**

An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall register with the Board as an Intern in compliance with section 54-3402, Idaho Code. (4-2-03)

**01. Requirements For Registration.** (4-2-03)

**a.** Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. (4-2-03)

**b.** Be actively pursuing postgraduate supervised experience. (4-2-03)

**c.** Designate a ~~Licensed Professional Counselor or Licensed Marriage and Family Therapist~~ supervisor who is registered as a supervisor or who is otherwise approved to provide marriage and family therapy supervision as defined in Section 54-3405C, Idaho Code, and who shall be responsible to provide supervision. (4-2-03)( )

**02. Registration.** An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule. (4-2-03)

**03. Practice.** (4-2-03)

**a.** A Registered Intern may only practice counseling or marriage and family therapy under the direct supervision of a Counselor Supervisor or Marriage and Family Therapist Supervisor who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. (4-2-03)

**b.** Only a Registered Intern may use the title Counselor Intern or Marriage and Family Therapist Intern. (4-2-03)

**c.** An individual shall not practice as an intern for more than four (4) years from the original date of registration. (4-2-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**400. RENEWAL OF LICENSE (Rule 400).**

Each person licensed under this act must renew said license ~~prior to July 1 of~~ each year or the license will be cancelled. Cancelled licenses may be reinstated in accordance with the requirements of Section 67-2614, Idaho Code. (3-13-02)( )

401. -- 424. (RESERVED).

**425. CONTINUING EDUCATION (Rule 425).**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### BUREAU OF OCCUPATIONAL LICENSES

Docket No. 24-1501-0301

### Rules of the Professional Counselors and Marriage and Family Therapists Proposed Rulemaking

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Every person holding an Idaho license as a Pastoral Counselor or a Marriage and Family Therapist must annually complete twenty (20) contact hours of continuing education prior to license renewal. (4-2-03)

**01. Contact Hours.** The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. One (1) contact hour for each renewal period shall be in ethics. ~~(4-2-03)~~( )

**02. Documentation Of Attendance.** It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (4-2-03)

**03. Excess Hours.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (4-2-03)

**04. Compliance Audit.** The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. (4-2-03)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE**

**DOCKET NO. 24-1701-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-4705, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 439 and 440.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 17, CHAPTER 01**

#### **RULES OF THE STATE BOARD OF ACUPUNCTURE**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 439 and 440.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

#### 24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4705, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Corrects Board address and changes the effective date for continuing education requirements for renewal.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233  
(208) 334-3945 (FAX)

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1701-0301

##### 005. ADDRESS OF THE IDAHO STATE BOARD OF ACUPUNCTURE (Rule 5).

The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~ibol~~ acu@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/acu. ~~(5-3-03)~~( )

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**(BREAK IN CONTINUITY OF SECTIONS)**

**302. RENEWAL REQUIREMENT (Rule 302).**

- 01. Active Status.** Each renewal application must be accompanied by: (3-10-00)
- a.** The established fee; and (3-10-00)
- b.** Beginning July 1, 2004, ~~C~~certification of having attended and completed a minimum of fifteen (15) hours of acupuncture study or oriental medical theory and techniques within the previous twelve (12) months, as approved by the Idaho Board of Acupuncture. ~~(5-3-03)~~(\_\_\_\_)
- c.** Compliance with the continuing education (CE) requirements for licensees shall be reported annually. A CE course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. (5-3-03)
- 02. Inactive Status.** A currently licensed or certified practitioner may request in writing to have their license placed on inactive status and pay the inactive status fee. Such request must be made prior to the expiration date of the license, otherwise the license shall be deemed cancelled for failure to renew. (5-3-03)
- 03. Definition Of Inactive Status.** "Inactive" status means an Idaho Acupuncture license that may be made active by paying the renewal fee. Until payment of said fee, such individual may not practice acupuncture in the state of Idaho. (5-3-03)
- 04. Waiving Continuing Education Requirements.** All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. Inactive license renewal notices and licenses will be marked "Inactive". A licensee desiring active status must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive and active renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year. (5-3-03)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES**

#### **24.19.01 - RULES OF THE BOARD OF RESIDENTIAL CARE FACILITY ADMINISTRATORS**

**DOCKET NO. 24-1901-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-4205, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 1, 2003, Idaho Administrative Bulletin, Volume 03-10, pages 444 and 445.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Rayola Jacobsen at (208) 334-3233.

DATED this 29th day of October, 2003.

Rayola Jacobsen, Bureau Chief  
Bureau of Occupational Licenses  
1109 Main St. Ste. 220  
Boise, ID 83702  
(208) 334-3233  
(208) 334-3945 fax

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### **IDAPA 24, TITLE 19, CHAPTER 01**

#### **RULES OF THE BOARD OF RESIDENTIAL CARE FACILITY ADMINISTRATORS**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 444 and 445.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

#### 24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0301

#### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is July 17, 2003.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-4205, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Incorporates by reference the ACHCA Code of Ethics; adds facility language to conform with Idaho Code; strikes temporary permit as law does not allow for extensions or emergency permits; adds violation of Code of Ethics as discipline.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Current law allows for adoption of code of ethics; rules bring terminology and language current with Idaho Code, and to be in compliance with deadlines in amendments to governing law or federal programs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There are no fees or charges imposed or increased as a result of these rules.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 19th day of August 2003.

Rayola Jacobsen  
Owyhee Plaza  
1109 Main Street, Suite 220  
Boise, Idaho 83702  
(208) 334-3233 / (208) 334-3945 (FAX)

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THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0301



## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

**004. INCORPORATION BY REFERENCE (Rule 4).**

*These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. The document titled "ACHCA Code of Ethics", published by the American College of Health Care Administrators (ACHCA) as referenced in Section 650, is herein incorporated by reference and is available from the Board's office and on the Board web site.* (3-15-02)(7-17-03)T

**(BREAK IN CONTINUITY OF SECTIONS)**

**401. CONTINUING EDUCATION (Rule 401).**

**01. Courses Approved.** Courses of study in ~~health and~~ residential care facility administration sponsored or provided by accredited universities or colleges; ~~and health or residential care~~ seminars relevant to residential care facility administration sponsored or approved by national, state agencies, or associations will be acceptable to meet the continuing education requirement. Seminars or ~~Other~~ courses of study ~~or seminars in residential care facility administration~~ may be approved by the Board. (4-2-03)(7-17-03)T

**02. Minimum Hours Required.** Applicants for annual recertification/renewal shall be required to have a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. First Aid and/or Cardio-Pulmonary Resuscitation courses shall not be considered for continuing education credit. (7-1-93)

**03. Educational Hour - Defined.** An hour of education will mean sixty (60) minutes. (7-1-93)

**~~402. TEMPORARY PERMITS - LIMITATIONS (Rule 402).~~**

~~**01. Requirements For Issuance.** A temporary permit may be issued for six (6) months upon application and payment of fees. Temporary permits may be renewed one (1) time without further qualification. A second renewal will be issued, only where an applicant has taken and passed one (1) part of the two part examination. No more than two (2) renewals will be issued for any reason.~~ (7-1-96)

~~**02. Emergency Permit.** An emergency permit will be issued only in the event that the facility experiences an unexpected vacancy.~~ (7-1-98)

**~~403. -- 499. (RESERVED).~~**

**(BREAK IN CONTINUITY OF SECTIONS)**

**650. DISCIPLINE (Rule 650).**

**01. Civil Fine.** The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensed residential care facility administrator for each violation of Section 54-4213(1), Idaho Code. (3-18-99)

**02. Costs And Fees.** The Board may order a licensed residential care facility administrator to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-4213(1), Idaho Code. (3-18-99)

**03. Code Of Ethics.** The Board has adopted (ACHCA) Code of Ethics. Violations of the code of ethics shall be considered grounds for disciplinary action. (7-17-03)T

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 27 - BOARD OF PHARMACY**

#### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0205**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1717, 37-2725, and 37-2718, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 456 through 459.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 28th day of October 2003.

R.K. "Mick" Markuson, Director  
Idaho State Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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### **IDAPA 27, TITLE 01, CHAPTER 01**

#### **RULES OF THE IDAHO BOARD OF PHARMACY**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 456 through 459.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 27 - IDAHO BOARD OF PHARMACY

#### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

DOCKET NO. 27-0101-0205

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1717, 37-2725, and 37-2718, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking recognizes revised controlled substance prescription forms authorized by House Bill No. 331 in the 2001 legislative session, as well as Senate Bill No. 1417 in the 2002 legislative session. The proposed rule changes outline the requirements for controlled substance prescription blank forms, as well as discipline to be assessed by the Board of Pharmacy in the event practitioners fail to follow the requirements of statute and rule with respect to controlled substance prescription blanks.

In October 2002, the Board Pharmacy adopted this rule as a temporary rule with an effective date of August 21, 2002. The temporary rule was published in the Idaho Administrative Bulletin, Volume 02-10, October 2, 2002, pages 601 and 604. With this publication the Department is initiating proposed rulemaking.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this proposed rule is unchanged from the temporary rule (published in the October 2, 2002 Administrative Bulletin) that was prepared with extensive negotiations between the affected parties.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 15th day of August 2003.

R.K. "Mick" Markuson  
Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, Idaho 83720-0067  
Telephone: (208) 334-2356  
Facsimile: (208) 334-3536

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.  
The temporary effective date is August 21, 2002.

The original text of the Temporary Rule was published in the Idaho  
Administrative Bulletin, Volume 02-10, October 2, 2002, pages 601 through 604.

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0205

#### 433. DEFINITIONS - (H -- Z).

**01. Hospital.** The term "hospital" means an institution for the care and treatment of the sick and injured, approved by the Department of Health as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner. (7-1-93)

**02. Individual Practitioner.** The term "individual practitioner" means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the state in which he practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner. (7-1-93)

**03. Institutional Practitioner.** The term "institutional practitioner" means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy. (7-1-93)

**04. Laboratory.** The term "laboratory" means a laboratory approved by the Idaho Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and medical purposes and for purposes of instruction and administered by a person licensed by the state of Idaho to possess such substances. (7-1-93)

**05. Name.** The term "name" means the official name, common or usual name, chemical name, or brand name of a substance. (7-1-93)

**06. Official Idaho Register.** The term "Official Idaho Register" is defined as the official register issued by the Board of Pharmacy and contains the required information to record the sales or disposition of Schedule V substances, which book shall be in duplicate bearing the notice to the public on the reverse side of the original sheet which is permanently bound in the book and shall be retained for a period of two (2) years after the last dated entry. (7-1-93)

**07. Owner.** The term "owner" as defined in this act, with reference to a vehicle, means any person having any right, title or interest in it. (7-1-93)

**08. Pharmacist.** The term "pharmacist" means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist-intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State. (7-1-93)

**09. Pharmacy.** The term "pharmacy" means every store or other place of business where prescriptions are compounded, dispensed or sold by a pharmacist and prescriptions for controlled substances are received or processed in accordance with the federal law and the pharmacy laws and rules of this state. (7-1-93)

**10. Prescription.** The term "prescription" as used in this act, means a prescription for a controlled

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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### IDAHO BOARD OF PHARMACY Rules of the Idaho Board of Pharmacy

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substance in Schedules III, IV, V, such prescription is an oral order given individually for the person for whom prescribed, directly from the prescriber or by the prescriber's employee or agent to the pharmacist or indirectly by means of an order written in ink, indelible pencil, typewritten, or a computer generated hard copy, signed by the prescriber, and shall contain the address of the prescriber, his federal registry number, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and shall be dated as of the date on which it is written. Written prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to federal and state laws, regulations and rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules. ~~Pre-printed blanks supplied by manufacturers are not permitted.~~ Persons receiving controlled substances shall be positively identified. (8-4-94)( )

**11. Register, Registration.** The terms "register" and "registration" refer only to registration required and permitted by Section 37-2717, Idaho Code. (7-1-93)

**12. Registrant.** The term "registrant" means any person who is registered. (7-1-93)

**13. Readily Retrievable.** The term "readily retrievable" means that certain records are kept by automatic data processing systems or other electronic or mechanized record keeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records. (7-1-93)

**14. Sale.** The term "sale" as used in this act, includes barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee. (7-1-93)

**15. Transport.** The term "transport" as used in this act, with reference to controlled substances, includes "conceal", "convey", and "carry". (7-1-93)

**16. Vehicle.** The term "vehicle" as used in this act, any vehicle or equipment used for the transportation of persons or things. (7-1-93)

**17. Physician, Veterinarian, Dentist, Podiatrist, Osteopath, Optometrist, Pharmacist.** As used in this act, these terms or any similar designation, means persons who hold valid, unrevoked licenses to practice their respective professions in this state, issued by their respective examining boards in this state. (12-7-94)

**18. Physician.** The term "physician" includes only persons licensed under Chapter 18 of Title 54, Idaho Code. (7-1-93)

### (BREAK IN CONTINUITY OF SECTIONS)

#### **470. REQUIREMENTS FOR PRESCRIPTION FORM -- DISCIPLINE OF PRACTITIONERS.**

**01. Prescription Form.** Any prescription for a Controlled Substance, including any prescription blank used for a Controlled Substance prescription, shall conform to the requirements of Section 37-2725, Idaho Code. ( )

**02. Discipline Of Practitioners.** A practitioner who issues a prescription for a Controlled Substance which does not comply with the requirements of Section 37-2725, Idaho Code, shall be subject to discipline by the Board as follows: ( )

**a.** Definition of "offense" – For purposes of this Subsection 470.02, the term "offense" shall mean clear evidence of a pattern of prescription writing by a practitioner in violation of the requirements of Section 37-2725, Idaho Code. ( )

**b.** First offense - a letter, with a representative copy or copies of prescriptions giving rise to the letter.

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### IDAHO BOARD OF PHARMACY Rules of the Idaho Board of Pharmacy

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shall be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address describing the offense and the basis for required action, with a copy of the letter and prescription sent to the practitioner's respective licensing board. The practitioner shall thereafter have thirty (30) days from the date of mailing to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho Code, the practitioner's licensing board shall be notified of such failure and given an opportunity to take appropriate action within thirty (30) days of receiving notice from the Board of Pharmacy and shall immediately notify the Board of Pharmacy when such action is taken. If the Board of Pharmacy is not notified of an action taken by the licensing board within such thirty (30) day period, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.c. ( )

**c.** Second offense - suspension of the practitioner's controlled substance registration for a period of one (1) week pursuant to Section 37-2718, Idaho Code, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the suspension action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension of registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address. Practitioners who wish to avoid the suspension action may do so by sending to the Board a written explanation for the offense along with a written plan of action setting forth how the practitioner will avoid offenses in the future and a payment of one hundred dollars (\$100) within thirty (30) days of mailing of notice of the offense. The practitioner shall have thirty (30) days from the date of mailing of the notice of offense to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho Code, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.d. ( )

**d.** Third offense - suspension of the practitioner's Controlled Substance registration for a period of thirty (30) days pursuant to Section 37-2718, Idaho Code, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension or registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address. Practitioners who wish to avoid the suspension action may do so by sending to the Board a written explanation for the offense along with a written plan of action setting forth how the practitioner will avoid offenses in the future and a payment of five hundred dollars (\$500) within thirty (30) days of mailing of notice of the offense. The practitioner shall thereafter have thirty (30) days from the date of mailing of the notice of offense to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho Code, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.e. ( )

**e.** Fourth offense - suspension or revocation of the practitioner's Controlled Substance registration pursuant to Section 37-2718, Idaho Code, for such period as the Board, in its discretion, may determine based on the circumstances, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension of registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address. ( )

**f.** Offenses subject to discipline under this Subsection 470.02 shall accumulate for each subsequent offense that occurs within six (6) months of the date the practitioner is sent notice of the prior offense. An offense occurring more than six (6) months after the date the practitioner receives notice of any immediately prior offense shall be deemed a first offense. ( )

**g.** Prescribing or dispensing Controlled Substances by a practitioner whose registration has been suspended or revoked hereunder shall be deemed a separate offense of the Board rule and applicable statute and shall be subject to separate action by the Board. ( )

**4701. -- 490. (RESERVED).**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 27 - BOARD OF PHARMACY**

#### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0303**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1706 and 54-1719(1) and (3), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, pages 460 through 463.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 28th day of October, 2003.

R.K. "Mick" Markuson, Director  
Idaho State Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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### **IDAPA 27, TITLE 01, CHAPTER 01**

#### **RULES OF THE IDAHO BOARD OF PHARMACY**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, pages 460 through 463.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 27 - BOARD OF PHARMACY

#### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

##### DOCKET NO. 27-0101-0303

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1706, 54-1717, and 54-1719(1) and (3), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule change allows return and use of unopened and unused drugs and makes a technical correction. This change responds to House Concurrent Resolution No. 17 directing the Board of Pharmacy and the Department of Health and Welfare to develop necessary statutory and rule changes to allow the return and use of unopened and unused drugs.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**NEGOTIATED RULEMAKING:** Informal negotiated rulemaking was conducted.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 15th day of August 2003.

R.K. "Mick" Markuson, Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720, Boise, Idaho 83720-0067  
Telephone: (208) 334-2356  
Facsimile: (208) 334-3536

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0303

#### 156. PHARMACIES.

**01. Change Of Ownership Or Location.** In case of change of ownership or location of a pharmacy, the original registration becomes void and must be returned with a new pharmacy application. (7-1-93)



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**02. Annual Report Of Pharmacy Employer.** Annually, on the date of renewal of registration, the pharmacy employer must notify the Board of the registered pharmacist-manager of the pharmacy and each registered employee-pharmacist and each extern/intern training in the pharmacy, on the place provided on the application. Any change in pharmacist or extern/intern employment must be reported to the Board within five (5) days. (7-1-93)

**03. Responsible Pharmacist Manager.** A non-registered proprietor of a pharmacy shall place in charge of such pharmacy a pharmacist licensed in the state of Idaho who shall be known as "responsible pharmacist manager" and the non-registered proprietor shall immediately report to the state Board of Pharmacy the name of the pharmacist manager. (7-1-93)

**04. Responsibility Of Pharmacist Manager.** Responsible pharmacist managers of pharmacies owned by non-registered proprietors are responsible for the management of such stores so far as they are affected by the pharmacy laws. Every part of the establishment coming under the regulation of the pharmacy laws shall be under the full and complete control of such responsible pharmacist manager. (7-1-93)

**05. Return Of Drugs Or Other Items.** In the interest of public health, drugs, medicines, sickroom supplies, devices and items of personal hygiene shall not be accepted for return by any pharmacist or pharmacy after such drugs, medicines, sickroom supplies, devices and items of personal hygiene have been taken from the premises where sold, distributed or dispensed, except that ~~unopened "Unit Dose" packaged~~ medications for in-patients of residential or assisted living facilities, licensed skilled nursing care facilities, and hospitals may be returned to the dispensing pharmacy for credit provided the following medications are liquid medications that have been supplied in manufacturer sealed containers and remain unopened, or the medications are in unopened "Unit Dose" packaging. In addition, the conditions set forth in Subsection 156.05.b. below are must be satisfied: (4-5-00)( )

a. Unit Dose is defined as medications packaged in individually sealed doses with tamper-evident packaging (e.g., single unit of use, blister packaging, unused ~~indictable~~ injectible vials and ampules). (4-5-00)( )

b. The following conditions must be satisfied ~~for returns of Unit Dose packaged medications for credit:~~ (4-5-00)( )

i. The medications must be returned with tamper-evident packaging intact and with no evidence of tampering. (4-5-00)( )

ii. In the professional judgment of the pharmacist, the medications meet all federal and state standards for product integrity. (4-5-00)

iii. Policies and procedures are followed for the appropriate storage and handling of medications at the facility and for the transfer, receipt, and security of medications returned to the dispensing pharmacy. (4-5-00)

iv. A system is in place to track restocking and reuse to allow medications to be recalled if required. (4-5-00)

v. No controlled substance may be returned except those delivered by Unit Dose on a daily delivery system. (4-5-00)

vi. If the drug is repackaged by the pharmacy, each repackage container must be labeled in accordance with the following (for purpose of this rule, any change from the original manufacturer's packaging prior to delivery of the medication to the hospital or the facility shall be considered repackaging): ( )

(1) Name and strength of the medication; ( )

(2) A suitable expiration date which shall not be later than the expiration date on the original manufacturer's container, or one (1) year from the date the drug is repackaged (If a medication that was repackaged and delivered to the hospital or facility is thereafter returned to the pharmacy and subsequently repackaged again, the expiration date hereunder shall not be later than the expiration date used when the medication was initially repackaged.); ( )

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(3) The date the medication was repackaged; ( )

(4) The manufacturer's lot number, expiration date, and identity; and ( )

(5) The identity of the pharmacist responsible for the repackaging. ( )

c. If the information required under Subparagraphs 156.05.b.vi.(4) and 156.05.b.vi.(5) is maintained in the internal records of the pharmacy, those requirements may be omitted from the labeling. The labeling requirements of Subparagraph 156.05.b.vi. shall apply in addition to the labeling requirements under Section 159. ( )

d. Medications that have been outside the custody and control of the hospital or facility for any reason, are not eligible for return. In order to be considered as having been in the custody and control of the hospital or facility, the medications must have been delivered by the dispensing pharmacy directly to the hospital or facility or to an agent thereof who is authorized and qualified to accept delivery, and the medications must then be held by the hospital or facility in an area suitable for storing medications and not accessible to any patients. Once a medication has passed from the hospital or facility storage area to the patient or to the patient's designee for any reason, the medication is no longer eligible for return. ( )

e. Medications otherwise eligible for return under this rule by virtue of their packaging but that have become ineligible for return for any reason must be marked as follows: ( )

i. Such medications that are released for self-administration by the patient, or for administration outside the hospital or facility premises or that are otherwise released to be taken outside the custody and control of the hospital or facility, shall first be clearly marked and identified "Not Eligible For Return" provided however, the foregoing requirement for marking shall not apply to the daily dose of medication released to a patient on the day such dose is to be administered provided the hospital or facility does not allow any such medication to be returned to the same medication storage area as medications eligible for return. ( )

ii. Such medications that are received by the hospital or facility from the patient or the patient's representative, and not directly from the dispensing pharmacy, and that are to be stored in the same storage area as medications which are eligible for return, shall first be clearly marked and identified "Not Eligible For Return". ( )

iii. In the event medications otherwise eligible for return under this rule by virtue of their packaging are discovered to be ineligible for return because they have been outside the custody and control of the hospital or facility, or for any other reason, such medications shall be clearly marked and identified "Not Eligible For Return" immediately upon discovery if they are to remain stored in the same storage area as medications that are eligible for return. ( )

f. Each pharmacy and the pharmacist-in-charge shall be responsible for consulting with each hospital or facility from which the pharmacy will accept returns under Section 156 to ensure that the hospital or facility has an employee or employees who are trained and knowledgeable in the proper storage, use, and administration of medications at the hospital or facility, and to ensure that the hospital or facility has in place and enforces written protocols that will ensure compliance with the conditions necessary to allow returns. The pharmacist-in-charge must review and approve the protocols. The pharmacy must keep a copy of the protocols, as well as the written approval thereof, on file in the pharmacy and produce the same for Board inspectors upon request. ( )

g. Each pharmacy and the pharmacist-in-charge that will be accepting returns under Section 156 shall establish written protocols for the pharmacy that will ensure compliance with Section 156 for all returns. The pharmacist-in-charge must review and approve the protocols. The pharmacy must keep a copy of the protocols, as well as the written approval thereof, on file in the pharmacy and produce the same for Board inspectors upon request. ( )

**06. Damaged Drugs.** To sell, offer for sale, barter or give away any drugs damaged by fire or water or by any other means that might affect the potency of the drug is prohibited without first obtaining the written approval

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of the Board.

(7-1-93)

**07. Dangerous Drugs.** Legend, controlled substances, or other limited sale items must be stored in accordance with United States Pharmacopoeia/National Formulary requirements in the prescription area (where prescriptions are compounded, dispensed or filled) and in a manner as to limit access to licensed pharmacists or authorized personnel of that area only. Failure to comply with this requirement shall be prima facie evidence of unprofessional conduct.

(7-1-93)

### (BREAK IN CONTINUITY OF SECTIONS)

#### 257. DRUGS FROM OUTSIDE SOURCES.

**01. Outside Pharmacies.** Whenever drugs or pharmaceutical services are obtained from outside of the institutional facility arrangements shall be made to insure that such outside pharmacist provides his services with sufficient professionalism, quality and availability to adequately protect the safety of the patients and to properly serve the needs of the facility. Such arrangements shall be made in writing and shall, at a minimum, specify that:

(7-1-93)

**a.** The outside pharmacist is to act in the capacity of a part-time Director and therefore, subject to these rules.

(7-1-93)

**b.** The pharmacist shall provide on-call service at all times.

(7-1-93)

**c.** Adequate storage facilities for drugs will be provided.

(7-1-93)

**d.** All prescription drugs in oral solid dosage form supplied to a licensed skilled nursing care facility, whether from an outside source or in-house pharmacy, shall be limited to no more than an eight day supply except where USP indicates the drug shall be dispensed in the original container. Up to a thirty-four (34) day supply will be allowed if provided in "Unit Dose", as defined in Idaho Board of Pharmacy Rule Subsection 156.05. ~~Return of these drugs will only be allowed if they are supplied in "Unit Dose".~~

(4-5-00)(\_\_\_\_)

**e.** All drugs in liquid form will be supplied in amounts not to exceed sixteen (16) ounces or an amount not to exceed a thirty-four (34) day supply. ~~Returns will only be allowed for liquid medications that have been supplied and remain in unopened, manufacturer sealed containers.~~

(7-1-97)(\_\_\_\_)

**f.** All drugs housed in long term care facilities will be labeled according to Idaho Board of Pharmacy Rule 159.

(8-4-94)

**g.** Automatic refilling of medications is prohibited, except where unit dose is used in a daily delivery system. Any continuation of medications must be reordered by the licensed skilled nursing care facility pursuant to a current physician's order.

(7-01-94)

**h.** All drugs supplied shall be labeled so as to insure that recalls can be effected and that proper control and supervision of such drugs may be exercised.

(7-1-93)

#### **02. Patient's Own Drugs.**

(7-1-93)

**a.** Whenever patients bring drugs into an institutional facility such drugs shall not be administered unless they can be precisely identified; administration shall be pursuant to a physician's order only.

(7-1-93)

**b.** If such drugs are not to be administered, then the Director shall, according to procedures specified by him in writing, have them turned in to the pharmacy which shall package and seal them and return them to an adult member of the patient's immediate family or store and return them to the patient upon discharge.

(7-1-93)

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 27 - BOARD OF PHARMACY**

#### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0304**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1706, 54-1717, and 54-1719(1) and (4), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 1, 2003 Idaho Administrative Bulletin, Volume 03-10, page 464.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 28th day of October, 2003.

R.K. "Mick" Markuson, Director  
Idaho State Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
Fax: (208) 334-3536

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### **IDAPA 27, TITLE 01, CHAPTER 01**

#### **RULES OF THE IDAHO BOARD OF PHARMACY**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-10, October 1, 2003, page 464.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 27 - BOARD OF PHARMACY

#### 27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY

##### DOCKET NO. 27-0101-0304

#### NOTICE OF RULEMAKING - PROPOSED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1706, 54-1717, and 54-1719(1) and (4), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2003.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule change expands the list of acceptable pharmacy references which are part of the required library in each pharmacy. This change is necessary to implement an expanded list of acceptable pharmacy references now recognized by the Board of Pharmacy.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking is noncontroversial.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2003.

DATED this 15th day of August, 2003.

R.K. "Mick" Markuson, Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720, Boise, Idaho 83720-0067  
Telephone: (208) 334-2356  
Facsimile: (208) 334-3536

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#### THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0304

#### 152. REFERENCE LIBRARY.

~~01-~~ Required Books. The latest edition and supplement(s) of the following: Idaho Pharmacy Law and Rules; ~~A current pharmacy patient counseling reference; Facts and Comparisons;~~ one (1) of the following current pharmacy references – Facts and Comparisons, Clinical Pharmacology, Micromedex; and one (1) other current pharmacy reference of your choice (book or computer diskette). ~~(8-4-94)( )~~

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

#### **58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0301**

#### **NOTICE OF RULEMAKING - PENDING RULE**

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 124 through 129. The agency received no public comments on the proposed rule, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

**SECTION 39-107D, IDAHO CODE, STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Phyllis Heitman at (208)373-0502, [pheitman@deq.state.id.us](mailto:pheitman@deq.state.id.us).

DATED this 24rd day of October, 2003.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

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#### **IDAPA 58, TITLE 01, CHAPTER 01**

#### **RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 124 through 129.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## **2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)**

### **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

#### **58.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO**

**DOCKET NO. 58-0101-0301**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 39-105 and 39-107, Idaho Code. This rulemaking updates citations to the federal regulations incorporated by reference as mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70 and fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this proposed rulemaking will be held as follows:

**September 8, 2003, 5:15 p.m.  
Department of Environmental  
Quality Conference Center  
1410 N. Hilton, Boise, Idaho**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

**DESCRIPTIVE SUMMARY:** The Rules for Control of Air Pollution in Idaho are updated annually in order to maintain conformance with EPA's regulations as well as fulfilling the requirements of Idaho's delegation agreement with EPA under Section 112(l) of the Clean Air Act and 40 CFR Part 70. This proposed rule updates citations to federal regulations incorporated by reference to include those revised as of July 1, 2003. This update includes the Maximum Achievable Control Technology (MACT) Standards promulgated as National Emissions Standards for Hazardous Air Pollutants (NESHAPS). Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 107.02; however, the web site address for obtaining federal regulations on line has been added.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

**SECTION 39-107D, IDAHO CODE, STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Phyllis Heitman at (208) 373-0502 or [pheitman@deq.state.id.us](mailto:pheitman@deq.state.id.us).

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before September 9, 2003.

DATED this 25th day of June, 2003.

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
pgradwoh@deq.state.id.us

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0101-0301

#### **008. DEFINITIONS FOR THE PURPOSES OF SECTIONS 300 THROUGH 386.**

- 01. Affected States.** All States: (5-1-94)
- a.** Whose air quality may be affected by the emissions of the Tier I source and that are contiguous to Idaho; or (5-1-94)
- b.** That are within fifty (50) miles of the Tier I source. (5-1-94)
- 02. Allowance.** An authorization allocated to a Phase II source by the EPA to emit during or after a specified calendar year, one (1) ton of sulfur dioxide. (5-1-94)
- 03. Applicable Requirement.** All of the following if approved or promulgated by EPA as they apply to emissions units in a Tier I source (including requirements that have been promulgated through rulemaking at the time of permit issuance but which have future-effective compliance dates): (5-1-94)
- a.** Any standard or other requirement provided for in the applicable state implementation plan, including any revisions to that plan that are specified in 40 CFR Parts 52.670 through 52.690. (5-1-94)
- b.** Any term or condition of any permits to construct issued by the Department pursuant to Sections 200 through 223 or by EPA pursuant to 42 U.S.C. Sections 7401 through 7515; provided that terms or conditions relevant only to toxic air pollutants are not applicable requirements. (4-5-00)
- c.** Any standard or other requirement under 42 U.S.C. Section 7411 including 40 CFR Part 60; (5-1-94)
- d.** Any standard or other requirement under 42 U.S.C. Section 7412 including 40 CFR Part 61 and 40 CFR Part 63; (5-1-94)
- e.** Any standard or other requirement of the acid rain program under 42 U.S.C. Sections 7651 through 7651o; (5-1-94)
- f.** Any requirements established pursuant to 42 U.S.C. Section 7414(a)(3), 42 U.S.C. Section 7661c(b) or Sections 120 through 128 of these rules; (3-23-98)
- g.** Any standard or other requirement governing solid waste incineration, under 42 U.S.C. Section 7429; (5-1-94)
- h.** Any standard or other requirement for consumer and commercial products and tank vessels, under 42 U.S.C. Sections 7511b(e) and (f); and (5-1-94)



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i. Any standard or other requirement under 42 U.S.C. Sections 7671 through 7671q including 40 CFR Part 82. (5-1-94)

j. Any ambient air quality standard or increment or visibility requirement provided in 42 U.S.C. Sections 7470 through 7492, but only as applied to temporary sources receiving Tier I operating permits under Section 324. (5-1-94)

**04. Designated Representative.** A responsible person or official authorized by the owner or operator of a Phase II unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a Phase II unit, and the submission of and compliance with permits, permit applications, and compliance plans for the Phase II unit. (5-1-94)

**05. Draft Permit.** The version of a Tier I operating permit that is made available by the Department for public participation and affected State review. (5-1-94)

**06. Emergency.** For the purposes of Section 332, an emergency is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the Tier I source to exceed a technology-based emission limitation under the Tier I operating permit due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. (4-5-00)

**07. Final Permit.** The version of a Tier I permit issued by the Department that has completed all review procedures required in Sections 364 and 366. (5-1-94)

**08. General Permit.** A Tier I permit issued pursuant to Section 335. (3-23-98)

**09. Insignificant Activity.** Those activities that qualify as insignificant in accordance with Section 317. (3-23-98)

**10. Major Facility.** A facility (as defined in Section 006) is major if the facility meets any of the following criteria: (3-23-98)

a. For hazardous air pollutants: (3-23-98)

i. The facility emits or has the potential to emit ten (10) tons per year (tpy) or more of any hazardous air pollutant, other than radionuclides, which has been listed pursuant to 42 U.S.C. Section 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

ii. The facility emits or has the potential to emit twenty-five (25) tpy or more of any combination of any hazardous air pollutants, other than radionuclides, which have been listed pursuant to 42 U.S.C. 7412(b); provided that emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any oil or gas pipeline compressor or pump station shall not be aggregated with emissions from other similar emission units within the facility. (5-1-94)

b. For non-attainment areas: (3-23-98)

i. The facility is located in a "serious" particulate matter (PM-10) nonattainment area and the facility has the potential to emit seventy (70) tpy or more of PM-10. (5-1-94)

ii. The facility is located in a "serious" carbon monoxide nonattainment area in which stationary sources are significant contributors to carbon monoxide levels and the facility has the potential to emit fifty (50) tpy or more of carbon monoxide. (5-1-94)

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iii. The facility is located in an ozone transport region established pursuant to 42 U.S.C. Section 7511c and the facility has the potential to emit fifty (50) tpy or more of volatile organic compounds. (5-1-94)

iv. The facility is located in an ozone nonattainment area and, depending upon the classification of the nonattainment area, the facility has the potential to emit the following amounts of volatile organic compounds or oxides of nitrogen; provided that oxides of nitrogen shall not be included if the facility has been identified in accordance with 42 U.S.C. Section 7411a(f)(1) or (2) if the area is "marginal" or "moderate", one hundred (100) tpy or more, if the area is "serious", fifty (50) tpy or more, if the area is "severe", twenty-five (25) tpy or more, and if the area is "extreme", ten (10) tpy or more. (3-23-98)

c. The facility emits or has the potential to emit one hundred (100) tons per year or more of any regulated air pollutant listed in Subsections 006.84.a. through 006.84.e. The fugitive emissions shall not be considered in determining whether the facility is major unless the facility belongs to one (1) of the following categories: (4-5-00)

i. Designated facilities. (3-23-98)

ii. All other source categories regulated by 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63, but only with respect to those air pollutants that have been regulated for that category and only if determined by rule by the Administrator of EPA pursuant to Section 302(j) of the Clean Air Act. (4-5-00)

**11. Part 70.** Unless specified otherwise in this chapter, all definitions adopted under 40 CFR Part 70, revised as of July 1, 2002~~3~~, are hereby incorporated by reference. (~~5-3-03~~)(      )

**12. Permit Revision.** Any permit modification, administrative amendment or reopening. (3-19-99)

**13. Phase II Source.** A source that is subject to emissions reduction requirements of 42 U.S.C. Section 7651 through 7651o and shall have the meaning given to it pursuant to those sections. (5-1-94)

**14. Phase II Unit.** A unit that is subject to emissions reduction requirements of 42 U.S.C. Sections 7651 through 7651o and the term shall have the meaning given to it pursuant to those sections. (5-1-94)

**15. Proposed Permit.** The version of a permit that the Department proposes to issue and forwards to the EPA for review. (5-1-94)

**16. Section 502(b)(10) Changes.** Changes that contravene an express permit term. Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), recordkeeping, reporting, or compliance certification requirements. (3-19-99)

**17. Tier I Operating Permit.** Any permit covering a Tier I source that is issued, renewed, amended, or revised pursuant to Sections 300 through 386. (3-19-99)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **107. INCORPORATIONS BY REFERENCE.**

**01. General.** Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 107.03 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-1-94)

**02. Availability Of Referenced Material.** Copies of the documents incorporated by reference into

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Rules for the Control of Air Pollution in Idaho**

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**Docket No. 58-0101-0301**  
**Proposed Rulemaking**

these rules are available at the following locations:

(5-1-94)

a. All federal publications: ~~Superintendent of Documents~~, U.S. Government Printing Office, ~~Washington, D.C. 20402 at (202) 783-3238~~ <http://www.gpoaccess.gov/index.html>; and ~~(5-1-94)( )~~

b. All documents herein incorporated by reference: (7-1-97)

i. Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255 at (208) 373-0502. (7-1-97)

ii. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, Idaho 83720-0051, (208) 334-3316. (7-1-97)

**03. Documents Incorporated By Reference.** The following documents are incorporated by reference into these rules: (5-1-94)

a. Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Appendix W to Part 51--Guideline on Air Quality Models. 40 CFR Parts 51 and 52 revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

b. Implementation Plan for the Control of Air Pollution in the State of Idaho (SIP), Department of Environmental Quality, November 1996. (3-19-99)

c. National Primary and Secondary Ambient Air Quality Standards, 40 CFR Part 50, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

d. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, Protection of Visibility, Identification of Integral Vistas, Subsection a, 40 CFR Part 51.304(a), revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

e. Approval and Promulgation of Implementation Plans, 40 CFR Part 52, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

f. Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR Part 53, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

g. Ambient Air Quality Surveillance, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD Air Monitoring), 40 CFR Part 58, Appendix B, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

h. Standards of Performance for New Stationary Sources, 40 CFR Part 60, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

i. National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

j. National Emission Standards for Hazardous Air Pollutants for Source Categories, 40 CFR Part 63, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

k. Compliance Assurance Monitoring, 40 CFR Part 64, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

l. Permits, 40 CFR Part 72, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

m. Sulfur Dioxide Allowance System, 40 CFR Part 73, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

n. Protection of Stratospheric Ozone, 40 CFR Part 82, revised as of July 1, 2002~~3~~. ~~(5-3-03)( )~~

o. Clean Air Act, 42 U.S.C. Sections 7401 through 7671g (1997). (3-19-99)

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Rules for the Control of Air Pollution in Idaho**

**Docket No. 58-0101-0301**  
**Proposed Rulemaking**

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**p.** Determining Conformity of Federal Actions to State or Federal Implementation Plans: Conformity to State or Federal Implementation Plans of Transportation Plans, Programs and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws, 40 CFR Part 93, Subpart A, Sections 93.100 through 93.129, revised as of July 1, 2002~~23~~, except that Sections 93.102(c), 93.104(d), 93.104(e)(2), 93.105, 93.109(c)-(f), 93.118(e), 93.119(f)(3), 93.120(a)(2), 93.121(a)(1), and 93.124(b) are expressly omitted from the incorporation by reference. ~~(5-3-03)~~(\_\_\_\_\_)

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0301

#### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require the Board to adopt amendments to federal law as set out in this pending rule.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 6, 2003, Volume 03-8, pages 133 through 139. The agency received no public comments on the proposal, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

**SECTION 39-107D, IDAHO CODE, STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal law or regulations.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or [jbrueck@deq.state.id.us](mailto:jbrueck@deq.state.id.us).

Dated this 14th day of November, 2003.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

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#### IDAPA 58, TITLE 01, CHAPTER 05

#### RULES AND STANDARDS FOR HAZARDOUS WASTE

**There are no substantive changes from the proposed rule text.**

**The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-8, August 6, 2003, pages 133 through 139.**

**This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.**

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

### IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 58.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 58-0105-0301

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapters 44 and 58, Title 39, Idaho Code. In addition, 40 CFR 271.21(e) and Section 39-4404, Idaho Code, require DEQ to adopt amendments to federal law as proposed under this docket.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 20, 2003. If no such written request is received, a public hearing will not be held.

**DESCRIPTIVE SUMMARY:** Idaho's Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations implementing the Resource Conservation and Recovery Act (RCRA) as directed by the Idaho Hazardous Waste Management Act (HWMA). Idaho has historically adopted both required and optional federal regulations so that Idaho's hazardous waste rules are the same as federal requirements. Optional federal regulations usually allow more flexibility to the regulated community; required federal regulations are necessary to maintain program primacy. Adoption by reference allows the Department of Environmental Quality (DEQ) to keep its rules up to date with federal regulation changes and minimizes the EPA Region 10 effort needed to keep Idaho's authorization current. Adoption by reference also simplifies compliance for the regulated community, who must only comply with one set of regulations. This proposed rule updates citations to the federal regulations incorporated by reference to include those revised as of July 1, 2003. Additional changes include technical corrections to corresponding federal regulations in Sections 005, 009, and 011 and clarification of the definition of Director in Subsection 015.01. Access to federal regulations is no longer available at the physical address for the U.S. Government Bookstore as provided in Subsection 002.02; however, the web site address for obtaining federal regulations on line has been added.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature if approved by the Legislature.

**SECTION 39-107D, IDAHO CODE, STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502 or [jbrueck@deq.state.id.us](mailto:jbrueck@deq.state.id.us).

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before September 3, 2003.

Dated this 25th day of June, 2003.

## 2004 - Health and Welfare Senate Vol 2 Pending Rule (Yellow)

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**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Rules and Standards for Hazardous Waste**

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**Docket No. 58-0105-0301**  
**Proposed Rulemaking**

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
pgradwoh@deq.state.id.us

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0105-0301

#### **002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.**

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 2002~~3~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. ~~(5-3-03)~~( )

**01. Exceptions.** Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

**02. Availability Of Referenced Material.** The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. ~~Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270~~ <http://www.gpoaccess.gov/index.html>; and ~~(7-2-97)~~( )

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

### **(BREAK IN CONTINUITY OF SECTIONS)**

#### **004. HAZARDOUS WASTE MANAGEMENT SYSTEM.**

40 CFR Part 260 and all Subparts, except 40 CFR 260.2, are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 260.10, in the definition of hazardous waste constituent, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 260.20, "Federal Register" shall be defined as the Idaho Administrative Bulletin. ~~(5-3-03)~~( )

#### **005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.**

40 CFR Part 261 and all Subparts, except the language "in the Region where the sample is collected" in 40 CFR 261.4(e)(3)(iii), except remanded waste codes "K064, K065, K066, K090 and K091" listed in 40 CFR Part 261 Appendix VII, except "49 CFR 173.300" in 40 CFR 261.21(a)(3) as replaced with "49 CFR 173.115 or equivalent test methods in Chapter 7 of SW-846," except "49 CFR 173.151" in 40 CFR 261.21(a)(4) as replaced with "49 CFR 173.127" and except 40 CFR 261.23(a)(8), are herein incorporated by reference as provided in 40 CFR, revised as of

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July 1, 2002~~3~~. For purposes of 40 CFR 261.10 and 40 CFR 261.11, "Administrator" shall be defined as the U.S. Environmental Protection Agency Administrator. For purposes of 40 CFR 261 Appendix IX, "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(\_\_\_\_)

**01. Excluded Wastes.** Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by EnviroSAFE Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (3-16-96)

**a. Verification Testing Requirements.** Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

**b. Initial Verification Testing.** (3-16-96)

i. For purposes of Subsections 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Department of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel. (3-16-96)

**c. Subsequent Verification Testing.** (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD. (3-16-96)

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the



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CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

**d.** Delisting Levels. (3-16-96)

i. All leachable concentrations for these metals must not exceed the following levels (mg/l):

antimony	0.06
arsenic	0.50
barium	7.60
beryllium	0.010
cadmium	0.050
chromium	0.33
lead	0.15
mercury	0.009
nickel	1
selenium	0.16
silver	0.30
thallium	0.020
vanadium	2
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

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- e. Modification of Treatment Process. (3-16-96)
- i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (3-16-96)
- ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (3-16-96)
- iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (3-16-96)
- iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Department of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (3-16-96)
- f. Records and Data Retention and Submittal. (3-16-96)
- i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department. (3-16-96)
- iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion." (3-16-96)
- g. Facility Merger and Name Change. On May 4, 2001, the Department was notified of a stock transfer that resulted in ESII's facility merging with American Ecology. This created a name change from EnviroSAFE Services of Idaho, Inc. (ESII) to US Ecology Idaho, Inc. effective May 1, 2001. All references to EnviroSAFE Services of Idaho, Inc. or ESII now refer to US Ecology Idaho, Inc. (3-15-02)

#### 006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. **Incorporation By Reference.** 40 CFR Part 262 and all Subparts, except for the language "for the Region in which the generator is located" in 40 CFR 262.42(a)(2) and 40 CFR 262.42(b), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002<sup>3</sup>. For purposes of 40 CFR 262.55, 262.56, and 262.57(b), "Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51, 262.53, 262.54(g)(1), and 262.85(g), EPA shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR Part 262 Subparts E, F, H, and 40 CFR

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262.41(a)(4), "United States or U.S." shall be defined as the United States.

(~~5-3-03~~)( )

**02. Generator Emergency Notification.** In addition to the emergency notification required by 40 CFR 265.56(d)(2), 262.34(d)(5)(iv)(C), (see 40 CFR 262.34(a)(4)), 263.30(c)(1), and 264.56(d)(2), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report.

(3-15-02)

**007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.**

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 263.20(g), 263.20(g)(1), 263.20(g)(4), 263.21(a)(4), and 263.22(d), "United States" shall be defined as the United States.

(~~5-3-03~~)( )

**008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.1(f), 264.149, 264.150, 264.301(l), 264.1030(d), 264.1050(g), 264.1080(e), 264.1080(f) and 264.1080(g)) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 264.1082(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)( )

**009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.**

40 CFR Part 265, and all Subparts (excluding Subpart R, 40 CFR 265.1(c)(4), 265.149, 265.150, 265.1030(c), 265.1050(f), 265.1080(e), 265.1080(f), and 265.1080(g)) and except the language contained in 40 CFR 265.340(b)(2) as replaced with, "The following requirements continue to apply even when the owner or operator has demonstrated compliance with the MACT requirements of part 63, subpart EEE of this chapter: 40 CFR 265.351 (closure) and the applicable requirements of Subparts A through H, BB and CC of this part.", are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. For purposes of 40 CFR 265.1083(c)(4)(ii), "EPA" shall be defined as the U.S. Environmental Protection Agency.

(~~5-3-03~~)( )

**010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.**

40 CFR Part 266 and all Subparts (~~excluding Subparts A and B~~) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~.

(~~5-3-03~~)( )

**011. LAND DISPOSAL RESTRICTIONS.**

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, 268.13, 268.42(b), and 268.44(a) through (g). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(17) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. For purposes of 40 CFR 268.2(j) "EPA" shall be defined as the U.S. Environmental Protection Agency. For purposes of 40 CFR 268.40(b), "Administrator" shall be defined as U.S. Environmental Protection Agency Administrator. In 40 CFR 268.7(a)(9)(iii), "D009" is excluded, (from lab packs as noted in 40 CFR Part 268 Appendix IV). In 40 CFR 268.48(a), the entry for "2,4,6-Tribromophenol" is excluded.

(~~5-3-03~~)( )

**012. HAZARDOUS WASTE PERMIT PROGRAM.**

40 CFR Part 270 and all Subparts, except 40 CFR 270.12(a) and 40 CFR 270.14(b)(18), are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(2), 270.10(f)(3), 270.10(g), 270.11(a)(3), 270.32(a), 270.32(b)(2), 270.32(c), 270.51, 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively.

(~~5-3-03~~)( )

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**013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).**

40 CFR Part 124, Subparts A and B are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. ~~(5-3-03)~~(\_\_\_\_)

**(BREAK IN CONTINUITY OF SECTIONS)**

**015. STANDARDS FOR THE MANAGEMENT OF USED OIL.**

**01. Incorporation By Reference.** 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 279.43(c)(3)(ii) "Director" shall be defined as the Director, U.S.DOT Office of Hazardous Materials Regulation. ~~(5-3-03)~~(\_\_\_\_)

**02. Used Oil As A Dust Suppressant.** 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

**a.** Be submitted to the Idaho Department of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706-1255; and (2-11-94)

**b.** Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

**016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.**

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 2002~~3~~. For purposes of 40 CFR 273.32(a)(3), "EPA" shall be defined as the U.S. Environmental Protection Agency. ~~(5-3-03)~~(\_\_\_\_)

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### IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0302

#### NOTICE OF RULEMAKING - PENDING RULE

**EFFECTIVE DATE:** This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2004 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

**DESCRIPTIVE SUMMARY:** A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, July 2, 2003, Volume 03-7, pages 83 through 85. The agency received no public comments on the proposed rule, and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

Pursuant to Section 67-5228, Idaho Code, this rulemaking also includes a correction to transcription errors found in Sections 300, 550, 551, and 552. References to Subsection 002.01 have been changed to 002.02.

**SECTION 39-107D, IDAHO CODE, STATEMENT:** This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at [www.deq.state.id.us](http://www.deq.state.id.us).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this rulemaking, contact Tom Aucutt at (208)373-0502, [taucutt@deq.state.id.us](mailto:taucutt@deq.state.id.us).

DATED this 14th day of November, 2003.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton, Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[pgradwoh@deq.state.id.us](mailto:pgradwoh@deq.state.id.us)

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#### IDAPA 58, TITLE 01, CHAPTER 08

#### IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 03-7, July 2, 2003, pages 83 through 85.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2004 Idaho State Legislature as a final rule.

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### IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

#### 58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0302

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code and Chapter 21, Title 37, Idaho Code. In addition, states which have primary enforcement responsibility for the Safe Drinking Water Act are required by 40 CFR 142.10(a) and 40 CFR 142.12(b) through (d) to adopt within two years of promulgation, national primary drinking water regulations that are no less stringent than the federal regulations in effect under 40 CFR Part 141.

**PUBLIC HEARING SCHEDULE:** No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before July 16, 2003. If no such written request is received, a public hearing will not be held.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The U.S. Environmental Protection Agency promulgated minor revisions to the Public Notification Rule and the Consumer Confidence Rule on November 27, 2002. These rules are national primacy drinking water regulations. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt these minor revisions within two years. The purpose of this rulemaking is to adopt these federal regulations by reference into the state rules.

**Public Notification Rule:** The Public Notification Rule requires public water systems to send notifications alerting their customers to drinking water system violations, waterborne emergencies, and other issues of potential concern. The minor revisions to this rule change the language for the health effects of two contaminants found in drinking water as listed in 40 CFR 141, Subpart Q.

**Consumer Confidence Rule:** The Consumer Confidence Rule requires community water systems to distribute annual water quality reports to their customers. The minor revisions to this rule change the language for the health effects of two contaminants found in drinking water as listed in 40 CFR 141, Subpart O. In addition, the Consumer Confidence Rule revisions include minor changes to address errors in the list of major health sources for copper and the rearrangement of regulatory and health effects language for disinfection byproducts within 40 CFR 141, Subpart O.

This rulemaking also deletes two subsections that are repetitive or no longer necessary (Subsections 301.06 and 400.05). Subsection 301.06 is repetitive of Subsection 150.06 because they both incorporate by reference 40 CFR 141.175. Subsection 400.05 is no longer necessary because the federal regulation incorporated by reference at 400.05 (40 CFR 143.5) is now included in 40 CFR 141, Subpart Q, which is incorporated by reference at Subsection 150.02.b. In addition, incomplete CFR citations found in Section 400 have been completed by adding the revision dates for those citations.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, the Idaho Department of Environmental Quality (DEQ) intends to present the final proposal to the Board of Environmental Quality in the fall of 2003 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2004 session of the Idaho Legislature.

**SECTION 39-107D, IDAHO CODE STATEMENT:** This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

**NEGOTIATED RULEMAKING:** Due to the nature of this rulemaking, negotiations were not held.

**GENERAL INFORMATION:** For more information about DEQ's programs and activities, visit DEQ's web site at

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**DEPARTMENT OF ENVIRONMENTAL QUALITY**  
**Idaho Rules For Public Drinking Water Systems**

**Docket No. 58-0108-0301**  
**Proposed Rulemaking**

www.deq.state.id.us.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning this rulemaking, contact Tom Aucutt at (208)373-0502, taucutt@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 30, 2003.

DATED this 15th day of May, 2003.

Paula J. Gradwohl  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418  
Fax No. (208)373-0481  
pgradwoh@deq.state.id.us

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### THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0108-0302

#### **150. REPORTING, PUBLIC NOTIFICATION, RECORDKEEPING.**

**01. Reporting Requirements.** 40 CFR 141.31, revised as of July 1, 2001, is herein incorporated by reference. (3-15-02)

**02. Public Notification.** 40 CFR 141, Subpart Q, revised as of July 1, 2002<sup>3</sup>, is herein incorporated by reference. (~~5-3-03~~)(      )

**03. Record Maintenance.** 40 CFR 141.33, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

**04. Unregulated Contaminant Reporting And Public Notification.** 40 CFR 141.35, revised as of July 1, 2003, is herein incorporated by reference. (~~10-1-93~~)(      )

**05. Reporting And Record Keeping For The Interim Enhanced Surface Water Treatment Rule.** 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

**06. Reporting And Record Keeping Requirements For The Disinfectants And Disinfectant Byproducts Rule.** 40 CFR 141.134, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

**151. CONSUMER CONFIDENCE REPORTS.** 40 CFR Part 141, Subpart O, revised as of July 1, 2002<sup>3</sup>, is herein incorporated by reference. (~~5-3-03~~)(      )

**(BREAK IN CONTINUITY OF SECTIONS)**

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### 301. ENHANCED FILTRATION AND DISINFECTION - SYSTEMS SERVING TEN THOUSAND OR MORE PEOPLE.

This Section incorporates, 40 CFR Part 141, Subpart P, of the National Primary Drinking Water Regulations, known as the Interim Enhanced Surface Water Treatment Rule. (4-5-00)

01. **General Requirements.** 40 CFR 141.170, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

02. **Criteria For Avoiding Filtration.** 40 CFR 141.171, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

03. **Disinfection Profiling And Benchmarking.** 40 CFR 141.172, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

04. **Filtration.** 40 CFR 141.173, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

05. **Filtration Sampling Requirements.** 40 CFR 141.174, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)

~~06. **Reporting And Record Keeping.** 40 CFR 141.175, revised as of July 1, 2002, is herein incorporated by reference. (5-3-03)~~

### (BREAK IN CONTINUITY OF SECTIONS)

### 400. SECONDARY MCLS.

01. **Purpose.** 40 CFR 143.1, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)( )

02. **Definitions.** 40 CFR 143.2, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)( )

03. **Secondary Maximum Contaminant Levels.** 40 CFR 143.3, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)( )

04. **Monitoring.** 40 CFR 143.4, revised as of July 1, 2003, is herein incorporated by reference. (10-1-93)( )

~~05. **Compliance And Public Notification.** 40 CFR 143.5 is herein incorporated by reference. (10-1-93)~~



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